

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**CRA No. 510 of 2014**

- Jansai Dhanuhar s/o. Dharau Dhanuhar, aged about 22 years, r/o. Village Baigapara, Ghumandidah, Bango, District Korba, Civil & Revenue District Korba (CG).

**---- Appellant.**

**Versus**

- State of Chhattisgarh through Station House Officer, Police Station Bango, District Korba (CG).

**---- Respondent**

---

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For Appellant        | : | Ms. Ashmita Shrivastava, Advocate. |
| For Respondent/State | : | Mr. Arvind Dubey, Panel Lawyer     |

---

**Judgment on Board**

**(28-4-2018)**

1. This appeal is directed against the judgment of conviction and order of sentence dated 12-2-2014 passed by the Additional Sessions Judge, Katghora, Sessions Division Korba, in Sessions Trial No. 25 of 2013 wherein the said court has convicted the appellant under Sections 450 and 376 (1) of the IPC and sentenced him to undergo RI for five years and to pay fine of Rs.500/- and RI for seven years and to pay fine of Rs.500/- respectively with default stipulations for committing house

trespass in the house of prosecutrix (PW/2) in order to commit rape on her and for committing rape on prosecutrix.

2. As per prosecution case, prosecutrix was in her house on 16-1-2013 at about 5.00 p.m., with her child aged about two years namely Deendayal and at the same time appellant entered into the house of prosecutrix and committed rape on her. On hearing cries of the prosecutrix, her husband Ramayan came to the spot from where appellant fled away after commission of offence. Ramayan tried to catch him, but the appellant anyhow managed to escape. The matter was reported in Police Station Bango and after completion of trial, the trial Court has convicted the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- (i) There is delay of two days in lodging first information report which is fatal to prosecution, but the trial Court overlooked this aspect of the matter.
- (ii) There is previous enmity between the parties, but the trial Court did not appreciate the same and came to a wrong conclusion.
- (iii) There are material omissions and contradictions in the statements of the prosecution witnesses which do not warrant conviction of the appellant, but the trial Court

did not give due weightage to evidence in its entirety.

- (v) Independent witnesses have not supported the case of prosecution but the trial Court has not evaluated their version and conviction of the appellant is bad in law. As per Doctor Namita Waltar (PW/5), there was no internal injury on the body of the prosecutrix, therefore, offence under Section 376 (1) of the IPC is not made out.

4. *Per contra*, learned State counsel supporting the impugned judgment of the trial Court has submitted that the finding arrived at by the trial Court is just and proper and there is no illegality or infirmity in it warranting any interference by this Court.
5. I have heard counsel for the parties and perused the material on record.
6. In order to substantiate the charge, prosecution examined as many as eleven witnesses.
7. Prosecutrix (PW/2) deposed that on the date of incident at about 5.00 pm she was with her child in the house and at the same time appellant entered into her house and committed rape on her. Version of this witness is firm after searching cross examination and nothing could be elicited in favour of defence. PW/4 Ramayan is husband of the prosecutrix who deposed that

on cries of his wife, he reached to the place of incident where the appellant was committing rape on his wife. He tried to catch the appellant on the spot, but anyhow he managed to flee away. He further deposed that one blue colour Jean full pant and one chappal were left by the appellant in his house. He further deposed that he informed the matter to village Kotwar and the other villagers who advised him to report the matter to police authorities. Version of this witness is again supported by version of Dheer Singh (PW/3) to whom prosecutrix and her husband informed about the incident. Version of all these witnesses is firm right from the day of lodging the report and there is nothing to discard their testimonies.

8. True it is that the incident took place on 16-1-2013 and first information report was lodged after two days i.e., on 18-1-2013, but the delay in lodging the first information report can occur due to various reasons. One of the reasons is the reluctance of the victim or her family members to go to the Police Station and to make a complaint about the incident which concerns the reputation of the victim and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family.

9. In the present case, the delay is not abnormal because the incident was informed to villagers and thereafter the victim decided to lodge the first information report which was lodged just after the incident. In the present case, prosecutrix cried on the spot and on hearing her cries, her husband reached to the spot when the appellant was committing rape on his wife. It is not the case that the prosecutrix suppressed the fact to anyone after the incident, therefore, delay of two days in lodging FIR is not sufficient to discard the prosecution case in the facts and circumstances of the case.
10. There is no force in the contention put-forth by the defence that the report is lodged on account of enmity. In case of rape no self respecting woman could come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which are to be looked into.
11. Version of prosecutrix is firm and the same is supported by the the version of witness who was on the spot and therefore, it is not a case where any scope to infer that such an allegation is made on account of any enmity. There is no material discrepancy in the evidence of all three witnesses. It is settled law that the discrepancies which do not affect the core of the

prosecution case or credibility of a witness cannot be levelled as omissions and contradictions. The evidence of all the three witnesses as a whole, appears to have ring of truth and if any witness defers in some details in relation to main incident, her/his version cannot be rejected. In the present case, all the witnesses are firm from the date of the incident and this Court has no reason to reject their version.

12. Rape is committed in a place of secrecy, therefore, eye-witnesses are seldom available. If the version of the prosecutrix is reliable, then it needs no corroboration, therefore, theory of corroboration by independent witness in case of rape is meritless. Dr. Namita Waltar (PW/5) examined the prosecutrix on 18-1-2013 and noticed the following injuries on her body.

- i) There was abrasion in the size of 1 x 2 cm over back side of both the shoulders.
- ii) Medral lesion of back abrasion in the size of 1 x 2 cm
- iii) In both buttocks (5x 12 cm) inflammation and tenderness on the side skin colour is bluish.
- iv) In both sides, front of high anterior medical aspect inflammation and tenderness in the size of 4x10 cm in right thigh and 3x 8 cm over left thigh.

- v) In vulva in vaginal opening two fingers inserted in side of vaginal – vaginal discharge and collected on glass slide, one hair particle found in vagina, it preserves in glass slide.
- vi) Patient self pubic hair preserve in glass slide.
- vii) Patient self blood sample preserve in glass slide.

13. Looking to the injuries and after internal examination, the expert opined that the intercourse is committed against the prosecutrix. Even if no injury is found on the body of the victim, in case of rape primacy is with the statement of the prosecutrix, but in the present case, several injuries were found on the body of the victim and the statement of the victim is of a sterling quality which cannot be rejected. The argument advanced on behalf of the appellant is not sustainable. House trespass in order to commit rape is an offence under Section 450 of IPC and commission of rape is punishable under Section 376(1) of IPC for which the trial Court convicted the appellant and the same is not liable to be interfered.

**14. Heard on the point of sentence.**

The trial Court awarded RI for seven years for offence punishable under Section 376(1) of IPC which is minimum

punishment and less than minimum cannot be awarded.

Sentence part is also not liable to be interfered.

15. Accordingly, the appeal is liable to be and is hereby dismissed.

The appellant is reported to be in jail, therefore, no further order for his arrest etc., is required to be passed.

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE

Raju