

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 01-12-2018
Judgment delivered on 12-12-2018

CRA No. 1027 of 2012

- Babaloo @ Narendra Kumar Singh, son of Anjor Singh Thakur, aged about 24 years, r/o. Ekata Nagar, Police Station Bhilai -3, District Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Bhilai -3, District Durg (CG).

---- Respondent

For Appellant : Mr. Kiran Singh, Advocate
For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-10-2012 passed by the 2nd Additional Sessions Judge, Durg, District Durg (CG) in Sessions Trial No.90 of 2011 wherein the said Court has convicted the appellant for commission of offence under Sections 366 and 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- on each count with default stipulations.
2. In the present case, prosecutrix is PW/5. As per version of prosecution, prosecutrix was minor and she was forcibly

taken to Railway Colony on motor-cycle driven by the appellant on 4-4-2011 at about 12.00 p.m., where she was subjected to forcible sexual intercourse. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) As per version of prosecutrix (PW/5), she has seen the appellant for the first time, therefore, finding of the trial Court without there being conduction of test identification is not sustainable.
- ii) Motor-cycle which is seized in the crime in question has no nexus with the owner and the appellant, therefore, that piece of evidence cannot be used against the appellant.
- iii) Place from where prosecutrix was forcibly abducted and where the offence was committed is thickly populated area and there is no possibility of any such happenings in broad day light., but the trial Court has ignored this aspect of the matter.
- iv) The trial Court overlooked the material contradictions and omissions in the evidence of the prosecution witnesses and

there was no external or internal injury found on the person of the appellant as per version of Dr. P.N. Singh (PW/6), therefore, finding of the trial Court is not liable to be sustained.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, prosecutrix is PW/5. She deposed before the trial Court that the appellant forcibly took her on his motor-cycle by pointing out the knife and committed bad work with her after removing her garments. PW/1 Saraswati and PW/8 Dasmata Bai, who is mother of the prosecutrix deposed that prosecutrix informed them regarding rape by the appellant. Dr. Neelima Sharma (PW/3) who examined the prosecutrix opined that age of the prosecutrix is 14 years and when she examined the prosecutrix, she found her hymen torn and also found bleeding from vagina. The appellant was also examined by Dr. P.N. Singh (PW/6) who

found that the appellant was capable to perform sexual intercourse.

7. Looking to the entire evidence which is unshaken during cross examination, the trial Court opined that the prosecutrix is not a consenting party and she had been taken by the appellant against her will and without her consent and rape was committed on her.

8. In the present case, date of offence is 4-4-2011 and report was lodged on same day in which name of the appellant is mentioned as culprit and there is no delay in lodging the report. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case on insignificant omission or contradiction.

9. After re-assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Again there is no material contradiction in the statement of the prosecutrix and other witnesses.

10. Considering the facts and circumstances of the case, the trial Court gave finding of kidnapping of prosecutrix with intention to compel her for sexual intercourse and rape is based on proper marshaling of the evidence and this court has no reason to record a contrary finding. Offence of abduction is punishable under Section 366 of IPC and offence of rape is punishable under Section 376 (1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of abduction and rape under Sections 366 & 376 (1) of IPC on each count which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

12 Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the jail

authorities, the appellant has suffered full jail term, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju