

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 874 of 2015

- Amarsingh Narethi S/o Ankalsingh Narethi, Pandey Aged About 45 Years R/o Village Bhandardigi, Ps- Durgukondal, District Uttar Bastar Kanker, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through The PS- Durgukondal, District Uttar Bastar Kanker, Chhattisgarh, Chhattisgarh

---- Respondent

For the Appellant : Shri Kalyan Karamkar, Advocate.
For the State/Respondent : Shri Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

04/08/2018

1. This appeal has been preferred against the judgment dated 28.05.2015 passed by the Additional Sessions Judge (FTC), North Bastar Kanker in S.T. No. 42/2013 by which the appellant has been convicted and sentenced as under:-

Conviction	Sentences
1. U/s 458 of Indian Penal Code, 1860.	RI for 7 years & fine amount of Rs.200/-and in default of payment of fine further R.I. for the period of 3

	month.
2. U/s 366 of Indian Penal Code.	RI for 5 years & fine amount of Rs.100/-and in default of payment of fine further R.I. for the period of 3 month.
3. U/s 376(2) of Indian Penal Code.	RI for 10 years & fine amount of Rs.500/-and in default of payment of fine further R.I. for the period of 6 month.
4. U/s 323 of Indian Penal Code.	RI for 6 months & fine amount of Rs.50/-and in default of payment of fine further R.I. for the period of 3 month.
5. U/s 25(1-B) of Arms Act	RI for 1 year & fine amount of Rs.100/-and in default of payment of fine further R.I. for the period of 1 month.

2. Brief facts of the case is this that on 27.1.2013 at about 8 pm in the evening a man, who had covered his face with cloth and carrying sword in his hand, came to the house of the prosecutrix and stated that he is a naxalite and then he forcibly took the prosecutrix towards a river nearby and there he committed the offence of rape with her. He also thrashed the prosecutrix alleging that she is the person who has sent away his wife. It was at that time the prosecutrix got opportunity to remove the cloth from the face of that man and she identified him as appellant in this case. FIR (Ex.P-2) was lodged on 28.1.2013.
3. After completion of investigation, charge-sheet was filed against the appellant. Appellant was charged with the offence punishable under Sections 458, 366, 376 (2) & 323 of the Indian Penal Code and under

Section 25 (1-B) of Arms Act. The appellant abjured his guilt and sought for trial. In order to prove its case, the prosecution has examined 12 witnesses in all. On being examined under Section 313 of CrPC, the appellant denied all the incriminating evidence appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined in defence.

4. On completion of trial, the impugned judgment has been passed convicting and sentencing the appellant in the manner as aforementioned.
5. It was submitted by counsel for appellant that the appellant has been falsely implicated in this case and the impugned judgment of conviction is erroneous. Statement made by the prosecutrix PW-1 in before the Court itself shows that there had been enmity between the appellant and the prosecutrix because the prosecutrix had played a role in sending away the wife of appellant. Apart from the prosecutrix PW-1, there is no eyewitness in this case. This situation also raise doubt, that the husband of the prosecutrix Daru Ram PW-3 and son of the prosecutrix Ankesh PW-5 did not go out for search of the prosecutrix in the night and waited for her till next morning. Hence, this lapse of time shows that the case is concocted after due deliberation. Hence, the evidence of prosecutrix is full of doubts which should not have been formed the basis of conviction against the appellant by the trial Court. Therefore, it is prayed that the appellant be acquitted. In the alternative, it is submitted that if this Court is not inclined to allow this appeal then, in the given facts and circumstances of the case, the

sentence imposed upon the appellant may be reduced as it is too harsh.

6. Learned counsel for the State opposes the appeal and submits that prosecutrix has proved the case beyond reasonable doubt. The statement given by prosecutrix PW-1 is unrebutted and corroborated by the statement of Dr. Sarita PW-9, who has found injuries on her body. FSL report is also corroborative as the vaginal slides of the prosecutrix shows presence of human spermatozoa. Hence, no case is made out for acquittal of the appellant. Even it not a fit case for reduction of sentence. Hence, the appeal be dismissed.
7. PW-1 prosecutrix is the sole eyewitness in this case. She has stated before the Court, that on the date of incident in the absence of her husband appellant came to her house, at that time he had covered his face with a piece of cloth and was carrying a sword. Appellant told her that he is a Naxalite (Maoist) and by putting her under threat forced her to go with him. She has stated that appellant took her towards the Bodeli river and there he raped her thrice. Subsequent to that, he said that he has been sent by the Naxalite Commander and demanded Rs.1 lakh. Later on, the appellant thrashed her with club causing injuries to her. During the incident, she managed to remove the cloth from the face of appellant and identified him. She has stated that thereafter the appellant released her and she came back home and informed about this incident to her husband & son. She had filed the written complaint ExP-1 on the next day and on that basis FIR ExP-2 was registered.

In the cross-examination, prosecutrix PW-1 stuck to the version given by her in the examination-in-chief. She has denied all the adverse suggestions given by counsel for appellant although it is admitted by her that she did not raise alarm when appellant was taking her with him, but she has offered explanation in this regard in her statement itself that as the appellant was armed with sword and he took her forcibly under the threat she could not raise alarm. In this way her statement has remained unrebutted to the extent that she was forcibly taken by the appellant to a nearby river and then he committed rape on her.

8. Banshi Lal PW-2 is the person who came to know about the incident from the husband of the prosecutrix. Daru Ram PW-3 husband of prosecutrix has stated that on the date of incident when he came back to his home, he was informed by his son that somebody had taken his mother. They went in search of the prosecutrix but could not find her. Next morning Sahangu Ram PW-12 came to him and informed that the prosecutrix is with his wife in the hutment situated in his agricultural field. This witness went there and brought back his wife prosecutrix, who was unable to walk. It is at that time the prosecutrix informed him about the incident that had taken place with her. This witness remained firm in his cross-examination, except for some omissions because of which he has been declared hostile by the prosecution, but the same are of no consequence and do not affect the credibility of remaining part of his statement which he has made before the trial Court.

9. Ankesh PW-5 was present at that time when the appellant came to the house saying that he is Naxalite and was carrying a sword. He saw the appellant dragging and taking away his mother (prosecutrix) with him. He has stated before the Court that on arrival of his father Daru Ram PW-3, he informed him about the incident. His statement has remained unchallenged in his cross-examination.
10. No question has been put in the cross-examination by the defence to dispute the identity of appellant, hence, identity of appellant appears to be unchallenged. The statement of prosecutrix finds support from the statement given by Dr. Sarita PW-9, who had medically examined the prosecutrix on 29.1.2013 and noticed injuries on her head, below left eye, chin, upper lip, right shoulder, chest, back which were abrasion and contusion, and suggestive of use of force and violence on her body. She has opined vide report ExP.17 that no definite opinion regarding sexual intercourse can be given. This witness has prepared vaginal slides of the prosecutrix and the same were sent for chemical examination to FSL and according to FSL report Ex. C1, the slides contained human spermatozoa which is another proof supporting the statement of the prosecutrix. Statement given by Daru Ram PW-3 regarding the incident is though hearsay, but his statement is otherwise relevant. According to this witness, on being informed by Sahangu Ram PW-12 that his wife (prosecutrix) is present in his hutment, he rushed there and found wife who was unable to walk. She immediately informed him about the incident that had taken place which has corroborative effect. Further, the

statement Ankesh PW-5 is also equally important who has seen the appellant taking away his mother forcibly which remained unchallenged in the cross-examination.

11. Daru Ram PW-3 has stated before the Court that on being informed by his wife that the appellant had thrown the sword in the river, he retrieved the same and produced before the police. Thus, this seizure is not from the appellant himself and for this reason, this evidence brought by the prosecutrix has no relevance. But the statement made by the prosecutrix that appellant was armed with sword at that time of incident and further that appellant was using force & threatening her has relevance. In the cross-examination no question has been put to prosecutrix PW-1 to contradict statement given by her in the examination-in-chief. Similarly, the statement given by Ankesh PW-5 that the appellant was armed with sword at the time of incident has not been challenged at all. Hence, this evidence is sufficient to hold that appellant was armed with a sword which is a weapon prohibited for possession without license and it is not a case of the appellant that he holds any license to keep or possess such sword. Hence, the finding on this point given by trial Court does not suffer from any infirmity.

12. After considering all the aspects of evidence of prosecutrix, I am of this opinion that the conviction of appellant under Sections 458, 366, 376, 323 of IPC and Section 25 of Arms Act needs no interference.

13. So far as the submission of counsel for appellant regarding reduction of sentence is concerned, considering the fact that the appellant is the

first offender, he has no criminal antecedent and it is the only offence committed by him, I am of this view that the prayer made on behalf of the appellant should be allowed.

14. Accordingly, the appeal is allowed in part. Conviction & sentence of appellant under Sections 458, 366, 323 of IPC and Section 25 of Arms Act are hereby maintained. Conviction of appellant under Section 376 of IPC is also maintained, however, the sentence imposed by the trial Court is reduced to RI for 7 years with fine of Rs.5000/-, in default of payment of fine to further undergo RI for 6 months.

**Sd/-
(Rajendra Chandra Singh Samant)**

Judge

Nisha