

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 355 of 2013

Mithlesh Kerketta, S/o. Shyam Lal Kerketta, Aged About 19 Years, R/o. Village Darrapara, Thakurpodi, Thana - Kapu, Tahsil Dharamjaigarh, Distt. Raigarh C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through - P.S. Incharge Kapu, Distt. Raigarh, Chhattisgarh

-----Respondent

For Appellant	: Mr. Sanjay Agrawal, Advocate
For Respondent/State	: Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the 1st Additional Sessions Judge, Raigarh, District Raigarh (C.G.), in Sessions Trial No.51/2012 on 07.02.2013, convicting the appellant for the offence under Section 376, 323, 341 & 342 of the Indian Penal Code and sentencing him to under go R.I. for 10 years along with fine of Rs.1,000/-, R.I. for 1 year and fine of Rs.200/-, S.I. for 1 month and R.I. for 1 year and fine of Rs.200/- respectively with default stipulations.
2. Facts of the case in brief is this that on 10.11.2011 at about 5.00 in evening, the prosecutrix (P.W.-1) had been to the fields to answer the call of nature at that time, the appellant came on the

spot and caught hold of the prosecutrix and by dragging her, took her to a lonely place and raped her. Subsequent to this act, the appellant also threatened the prosecutrix with dire consequences in case, she informed about this incident to anybody. FIR was lodged on 11.11.2011 by the prosecutrix. On the basis of the information, offence under Section 354, 341, 342, 323 of the Indian Penal Code were registered against the appellant. The prosecutrix had first concealed this fact that she was raped. On disclosure made by her later on, a written complaint was given and on that basis, FIR Ex.P-2 was recorded. Investigation was completed and the charge-sheet was filed subsequently before the concerned Court.

3. Appellant was charged with offence under Section 341, 342, 323, 376 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 6 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable

and cogent evidence in support of the charge. It is submitted that there are sufficient contradictions and omissions in the statement of the witnesses, because of which their statements should not have been relied upon for convicting the appellant in this case. The appellant was entitled for acquittal in this case. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellant in that case, at least sentence imposed upon the appellant, which appears to be too harsh may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. The prosecutrix (P.W.-1) has stated that on the date of incident, she along with her sister – Anjali Yadav (P.W.-2) had been to the fields to answer the call of nature. It was at that time, the appellant came to her, caught hold of her and threatened and dragged away the prosecutrix, then appellant assaulted her

because of which, she went unconscious. A written complaint Ex.P-1 was given by her on the next date of the incident. She has further stated that she gave another complaint Ex.P-3 in the police station alleging that the appellant had raped her. In cross-examination, she has stated that she had went unconscious at the time of incident and she has also informed her parents that she was raped by the appellant. There is no such statement in her cross-examination on the basis of which, the statement given in examination-in-chief stands rebutted or contradicted.

9. Anjali Yadav (P.W.-2) has not supported the case of the prosecution, whereas, she was examined by the prosecution as eye-witness. Sunaram (P.W.-3) is the father of the prosecutrix, he has stated that when his daughter did not reach home, he went for her search and saw that the appellant was present in the hut with the victim/prosecutrix of this case. He has stated that the prosecutrix informed him that the appellant has raped her. His statement has not been contradicted in the cross-examination.
10. Dr. Smt. Uma Agrawal (P.W.-5) examined the victim/prosecutrix on 13.11.2011 and found that her hymen was ruptured, on that basis she has given opinion that the prosecutrix was subjected to sexual intercourse, but she can not give any specific opinion about the time of such intercourse. In cross-examination, there is no such statement, so as to hold that the opinion given by this witness is unreliable.

11. Rest of the witness examined in this case are procedural witnesses. After due consideration on all the evidence present on record and close scrutiny of the same, it appears that it is a case in which the prosecution has established that the appellant committed the offence and for which he has been convicted by the trial Court in the impugned judgment.
12. Considering on the alternative submission made by the counsel for the appellant, after due consideration, it appears that the period of detention is short of few months before 7 years are going to be completed. On the basis of facts and circumstances of the case I am of this opinion that the appellant has been punished in the offence with minimum sentence, which appears to be sufficient for the purpose in this case. Hence, on the basis of this finding, this appeal is allowed in part. The conviction recorded by the trial Court in the impugned judgment in all the offences charged are upheld. The sentence imposed upon the appellant for offence under Section 376 of the Indian Penal Code is interfered with and set-aside and instead of that, the appellant is now sentenced with R.I. for 7 years along with fine of Rs.1,000/-. Whereas the sentence of imprisonment and fine with respect to the remaining offences for which the appellant has been convicted are maintained as they are.

Sd/-
(Rajendra Chandra Singh Samant)
Judge