

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 417 of 2015

- Bholaram Sahu S/o Umrao Sahu, aged about 24 years, R/o village Sarda Sahupara, Police Station Berla, Civil and Revenue District- Bemetara, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station-Bhilai Bhatthi, District- Durg, Chhattisgarh.

---- Respondent

For the Appellant : Mr. Mirza Kaiser Baeg, Advocate.

For the State/Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

14/04/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 17.12.2014 passed by the Additional Sessions Judge(FTC), District- Durg (CG) in Sessions Trial No.152/2012, whereby appellant was convicted under Sections 376 (1) & 323 of IPC and sentenced to undergo RI for 10 years and a fine of Rs.10,000/- and RI for 1 year with fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 3 months, plus default stipulations, respectively. All the sentences were directed to be run concurrently.

2. The prosecution case, in brief, is that the prosecutrix, who is a Beggar by profession and 65 years old woman, was caught hold of by the appellant and by using force on her body he firstly caused injuries to her and thereafter raped her without her consent and willingness. On alarm being raised by the prosecutrix, some CISF personnels came there and caught hold of the appellant. FIR Ex.P/8 was lodged and investigation was conducted. After completion of investigation, charge-sheet was filed against the appellant.
3. The trial Court charged the appellant with the offence under Sections 376 (1) & 307 of IPC. Appellant denied the charges and sought for trial. The prosecution in order to prove its case examined 11 witnesses in all. On examination under Section 313 of CrPC, appellant denied all the incriminating evidence against him and pleaded innocence and false implication. No evidence was led in defence. By the impugned judgment, the appellant has been convicted and sentenced as mentioned above.
4. Learned counsel for the appellant submits that the erroneous judgment of conviction has been passed against the appellant. Evidence of prosecution witnesses was not believable and although the prosecutrix has given statement in favour of the prosecution, but none of the prosecution witnesses has made any statement supporting the version of the prosecutrix. Dr. B.N. Vahne (PW-11), who examined the prosecutrix, has not given any definite opinion as to commission of sexual intercourse with the prosecutrix, hence, the appellant is entitled to be acquitted by extending him benefit of doubt.

5. Learned counsel for the State has opposed the grounds raised in appeal and the arguments submitted in this behalf. It is submitted that prosecution has proved its case beyond reasonable doubt. Prosecutrix PW/4 has made a clear statement which is supported by the statement of Kamta Prasad PW-1, Kaushal Prasad Sahu PW-3, Subodh Acharya PW-5 & Manish Sahu PW-9. The opinion given by examining doctor is of no consequence as the statement of the prosecutrix is very clear & consistent in this respect, hence, there is no ground for interference in the impugned judgment.
6. Heard the arguments and perused the record of the trial Court.
7. The point of issue in this case is, whether the prosecution has proved its case beyond reasonable doubt and whether there is any scope of interference in the impugned judgment?
8. Prosecutrix PW-4 has stated that on the date of incident, the appellant by force caught hold of her, took her towards the shrubs and there he committed forcible sexual intercourse with her. He also threatened her by saying, that if she will disclose the incident to anyone, he would kill her. She has further stated that on seeing some police persons on the road, she raised alarm and hearing her voice, the police personnel came there and caught hold of the appellant. She has stated that she has lodged FIR ExP-8. In the cross-examination, her testimony could not be impeached and defence has not been able to elicit anything incriminating which goes to show that the statement given by the prosecutrix is false or unreliable.
9. Constable Subodh Acharya PW-5 is the person, who reached the

spot on alarm being raised by the prosecutrix and caught hold of the appellant. The prosecutrix narrated the entire incident to him. This witness remained firm in his cross-examination and almost similar statement as has been made by Manish PW-9, another CISF personnel, who came on the spot after hearing cries of prosecutrix and caught hold of the appellant. According to this witness, he was informed by the prosecutrix that she was raped by the appellant. This witness also remained firm in his cross-examination. Kamta Prasad PW-1 is the son of prosecutrix, who has also stated similarly. Kaushal Prasad PW-3 is also a witness to whom the prosecutrix narrated the incident immediately after the incident.

10. Dr. B.N. Vahne PW-11 examined the prosecutrix on 2.6.2012, a day after the incident, and found one abrasion injury over right elbow and two bruises on face. The prosecutrix was complaining of pain on her back & neck. On internal examination, the doctor did not notice any injury on the private parts of the prosecutrix. As per report ExP-13 given by the doctor, he did not notice any sign of commission of recent forcible sexual intercourse with the prosecutrix.
11. Inspector PW-10 has given statement about the lodging of FIR ExP-8 and also about the investigation conducted by him.
12. On close scrutiny of the evidence brought on record by the prosecution in this case, it is found that the prosecutrix PW-4 is a key witness, who has clearly stated about the offence of rape committed with her by the appellant. Other witnesses namely constable Subodh PW-5, Manish PW-9, who reached on the spot immediately after the

incident and to whom the entire incident was disclosed by the prosecutrix, have duly supported the version of the prosecutrix. This immediate communication by the prosecutrix to these witnesses has relevance. Although the medical evidence is not clear about the commission of forcible sexual intercourse but only for this reason the entire evidence of the prosecutrix cannot be discarded. It is well settled that the evidence of the prosecutrix alone is sufficient for the purpose of conviction provided if it is found to be reliable, cogent, credible and more importantly, if it inspires confidence in the mind of the Court. In the case in hand, the prosecutrix, an old lady aged about 65 years, has given a clear description of the entire incident. There is no material on record to suggest false implication of the appellant in the present case. Hence, I am of this opinion that the prosecution has proved its case beyond reasonable doubt that it was appellant, who not only committed rape with the prosecutrix but also caused simple injuries to her.

13. On due consideration, this Court is of the considered view that there is no scope of any interference in the impugned judgment of conviction and sentence passed by the trial Court. The appeal has no substance, the same is liable to be and is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge