

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-2-2019
 Judgment delivered on 7-2-2019

CRA No. 888 of 2011

- Pareshwar Chouhan s/o. Punmau Ram Chouhan, aged about 40 years, occupation Agriculturist r/o. Vijaypur, behind Maharshi School, Police Station Chakradhar Nagar, Raigarh, District Raigarh (CG).

---- Appellant

Versus

- State of Chhattisgarh through SHO PS Chakhradhar Nagar, District Raigarh. (CG).

---- Respondent

 For Appellant : Mr. Manoj Jaiswal, Advocate.

For respondent/State : Mr. Raghavendra Verma, GA.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 10-10-2011 passed by the First Additional Sessions Judge, Raigarh, District Raigarh in Sessions Trial No. 124 of 2010 wherein the said Court has convicted the appellant for commission of offence under Sections 342, 506 Part II and 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for one year , RI for four years and RI for seven years.

2. In the present case, prosecutrix is PW/6. As per prosecution case, on 11-8-2010 at about 12.00 to 5.00 p.m., prosecutrix had gone to Kosabadi forest for collecting wood. Appellant came there, caught hold her, took her to his home, threatened her to kill and thereafter committed forcible intercourse with her. 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) There is no eye-witness account in the present case and appellant has been arrested on the basis of suspicion.
- ii) The trial Court has overlooked the material contradictions and omissions in the statements of the prosecution witnesses. Medical expert who examined the prosecutrix, did not give firm opinion regarding commission of rape.
- iii) The appellant has made complaint against Sarpanch namely Manish Sharma (PW/1), therefore, he and prosecutrix have made

false report. The finding of the trial court is not based on proper marshaling of the evidence, therefore the same is liable to be reversed.

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, date of incident is 11-8-2010 and report was lodged on the next day i.e., 12-8-2010 as per Ex.P/6 at Police Station Chakradhar Nagar in which name of the appellant is mentioned as culprit and his act of commission of rape is also mentioned in the said report. PW/6 prosecutrix deposed before the trial Court that she had gone to Kosabadi forest to collect wood and when she reached near village Mohari, appellant caught her and dragged her towards his house, closed the door of the house and committed rape on her. She further deposed that the

appellant threatened her to kill if she would make noise. When the appellant opened the door in the evening, then only she was able to come out of the house of the appellant. Version of this witness is supported by version of PW/1 Manish Sharma and PW/7 Satyanarayan, who is husband of the prosecutrix. All the witnesses have been subjected to searching cross examination but remained unshaken. Version of direct evidence and FIR is supported by version of Dr. P.K. Gupta (PW/10) who examined the appellant and found him capable of intercourse. There is no material contradictions in the statement of the prosecutrix and other witnesses. Minor contradictions are insignificant and have no adverse affect to the entire case of the prosecution.

7. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary,

8. In the present case, there is delay of one day 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. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving other offences. 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 merely on the ground that there is some delay in lodging the FIR.

9. The trial Court has considered all the aspects of the matter and after evaluating the entire evidence opined that it is a case of confinement, threatening to kill and rape which is punishable under Sections 342, 506 Part II and 376 of IPC.

10. After 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 and this court has no reason to substitute a contrary finding. The act of the appellant falls within mischief

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 rape under Section 376 (1) of IPC 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 the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju