

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-11-2019
 Delivered on 20-12-2019

CRA No. 2079 of 1999

- Poyami Boti s/o. Poyami Budhu, aged about 32 years, cultivator, resident of village Mawalibhata, Police Station Kodenar, District Bastar (MP) Now CG.

---- Appellant.

Versus

- The State Of Madhya Pradesh (Now State of Chhattisgarh).

---- Respondent

For Appellant : Mr. Azad Siddique and Mr. F.S. Khare, Advocates

For respondent/State : Mrs. Smita Jha, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-7-1999 passed by the Sessions Judge, Bastar at Jagdalpur (CG) in Sessions Trial No. 97 of 1999 wherein the said Court has convicted the appellant for commission of offence under Section 376 read with Section 511 of IPC and sentenced him to undergo rigorous imprisonment for three years and six months.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, on the date of incident i.e., 25-11-1998 her father

went to village Dodrapal and did return in the night, the appellant entered into her house and informed her that her father was lying in the garden after consuming liquor and thereafter she went along with appellant to bring her father. When she reached near the field, appellant made her lay down on the earth and when she cried, he threatened her and put cloth in her mouth, removed her garments and thereafter committed sexual intercourse with her. The matter was informed to her father by prosecutrix which is supported by version of her mother PW/2 Malti Bai and her father Budru (PW/3). Dr. Hina Ahmed (PW/4) examined the prosecutrix and opined that an attempt to rape was committed against the prosecutrix. The trial court after evaluating the entire evidence recorded finding that it is a case of attempt to rape.

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

- i) Statement of prosecution witnesses is full of contradiction but the trial court believed the same, therefore, finding of the trial court is not sustainable.
- ii The trial court failed to see that the prosecution witnesses are close relatives and interested witness, therefore, their testimonies ought to have been disbelieved.

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. Prosecutrix (PW/1) deposed before the trial court that her father namely Badru (PW/3) went to village Dondrapal market and did not return. The appellant came to her house and informed that her father was lying in the field after consuming excessive liquor. On his information prosecutrix went along with appellant to take back her father. In the mid-way appellant removed garments of the prosecutrix and committed sexual intercourse with her without her consent and against her will. Version of this witness is supported by her mother Motali Bai (PW/2) and Badru (PW/3) who is her father. It is further supported by version of Dr. Heena Ahmed (PW/5) who examined the prosecutrix on 27-11-1998 at Maharani Hospital, Jagdalpur and found that hymen of the prosecutrix was injured and found abrasion on her private part and both knees. She opined that attempt to rape is committed against the prosecutrix. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Dr. Govind Singh (DW/1) who examined x-ray

of the prosecutrix deposed that age of the prosecutrix is above 13 years and below 16 years. Chuloram (DW/2) deposed before the trial court that Badru (PW/3) who is father of the prosecutrix committed theft of Sesame of the appellant and he was fined to Rs.100/- in Panchayat that is why a false case was instituted against the present appellant.

6. In view of this court, 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 and communicate against her chastity to people at large, therefore, argument advanced on behalf of the appellant on this count is not sustainable especially when Badru (PW/3) is not cross examined on that count. There is no reason to interfere with the judgment passed by the trial court, therefore, conviction for offence under Section 376 read with Section 511 of IPC is hereby affirmed.

7. Heard on the point of sentence.

The trial Court awarded RI for 3 1/2 years for offence of attempt to commit rape under Section 376 read with Section 511 of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

8. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail.

His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 30-04-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju