

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 8-11-2019
Delivered on 20-11--2019

CRA No. 338 of 1999

- Somaru Singh s/o. Ramdayal Singh Gond, aged 24 years, resident of village Sarvat, Police Station Basantpur, District Surguja, MP Now CG.

---- Appellant

Versus

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

---- Respondent

CRA No. 336 of 1999

- Jaiprakash Singh s/o. Dalsai Singh, aged 28 years, Agriculturist, resident of village Sarvat, Police Station Basantpur, District Surguja, MP now CG.

---- Appellant

Versus

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

---- Respondent

CRA No. 337 of 1999

- Ramdhani s/o. Ramjeet aged 50 years, Agriculturist, resident of village Sarvat, Police Station Basantpur, District Surguja, MP now CG.

---- Appellant.

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellants : Mrs. Savita Tiwari, Advocate.

For respondent/State : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. As all the aforesaid three appeals arise out of common judgment/incident, they are heard analogously and are being disposed of by this common judgment.
2. All the three appeals are preferred against the judgment of conviction and order of sentence dated 30-1-1999 passed by the First Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No. 204 of 1997 wherein the said Court has convicted and sentenced the appellants as under.

<u>CONVICTION</u>	<u>SENTENCE</u>
Appellant Somaru Singh in CRA No. 338 of 1999 under Sections 342, 376 (2)(g) and 506 of IPC.	RI for one year, RI for ten years and to pay fine of Rs.1000/- and RI for one year respectively with default stipulations.
Appellant Jaiprakash Singh in CRA No. 336 of 1999 under Sections 342 and 376 (2) (g) of IPC.	RI for one year and RI for ten years and to pay fine of Rs.1000/- respectively with default stipulations.
Appellant Ramdhani in CRA No. 337 of 1999 under Sections 342 and 376 (2) (g) of IPC.	RI for one year and RI for ten years and to pay fine of Rs.1000/- respectively with default stipulations

- 3.. In the present case, prosecutrix is PW/5. As per version of prosecution on 24-4-1997 at village Sarvat construction work was

going on and prosecutrix and other workers were unloading sand from the Tractor in front of Panchayat building which was closed to place of work. All the appellants were present and appellant Jaiprakash asked the prosecutrix to keep the wooden lock in the Panchayat room and when she entered into the room, appellant Jaiprakash bolted the door where appellant Somaru Singh committed rape on her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

4. Learned counsel for the appellants would submit as under:

- i) The report was lodged after six days of the incident i.e., 30-4-1997 which creates doubt on prosecution case.
- ii Dr. Kalpana Tonde (PW/1) who examined the prosecutrix did not find injuries on the body of the prosecutrix and did not give definite opinion regarding sexual intercourse, therefore, case of the prosecution is not established.
- lii) Prosecutrix has changed her version from time to time, therefore, her version is not dependable. Version of the prosecutrix is

not supported by independent witnesses, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in the matter of **Pardeep Kumar vs. Union Administration, Chandigarh, reported in (2007) 1 SCC (Cri) 41.**

5. 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.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. The question for consideration of this court is whether the prosecutrix is raped by all the three appellants who were acting in furtherance of their common intention.

8. PW/5 prosecutrix is sole eye-witness of the incident. As per version of this witness, Ramdhani asked her to keep the wooden lock in the room of Panchayat building. When she kept the wooden lock in the room, appellant Ramdhani closed the door and appellant Somaru Singh caught hold her, made her lay down on the ground,

removed his garments and thereafter he removed her garments and committed sexual intercourse with her without her consent and against her will. This witness has not deposed anything against appellant Jaiprakash. This witness though deposed before the trial court that Ramdhani closed door but this fact is not mentioned in the FIR lodged by her as per Ex.P/4. Looking to the material omission it is not safe to record finding that Ramdhani closed the door at the time of incident. From the evidence of prosecutrix, only thing which is established is appellant Somaru Singh committed rape on her. Version of this witness is unrebutted during cross examination. Version of this witness is further corroborated by the evidence of Dr. Arvind Bhatt (PW/6) who examined the appellant Somaru Singh and found him capable of intercourse. Version of this witness against Somaru Singh is constant right from lodging of the FIR to deposition before the trial court, therefore, it is not a case where prosecutrix has changed her version regarding commission of offence by the appellant Somaru Singh.

9. It is contended on behalf of the appellants that date of incident is 24-4-1997 and report was lodged on 30-4-1997 i.e., after six days of the incident, therefore, case of the prosecution is doubtful.

10. In view of this court, 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.

11. 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, therefore, argument advanced on behalf of the appellant Somaru Singh is not acceptable. There is nothing on record to say that the appellant Somaru Singh has been falsely roped with charges. Looking to the entire evidence it is established that appellant Somaru Singh committed rape on prosecutrix and the act of Somaru Singh falls within mischief of Section 376 (1) of the IPC and his conviction is modified for offence under Section 376 (1) of IPC. Prosecutrix has not deposed that the appellant Somaru Singh closed the door and confined her, therefore, there is no evidence to establish charge under Section

342 of IPC against appellant Somaru Singh. Again, there is no evidence that any threat to kill was given by this appellant to prosecutrix, therefore, charge under Section 506 of IPC is also not established against him.

12. Accordingly, appellant Somaru Singh is acquitted of the charge under Sections 342 and 506 of IPC. So far as appellants Jaiprakash and Ramdhani are concerned, evidence of closing of door by Ramdhani is shaky in nature because same is not mentioned in the FIR. Again, there is no evidence that Jaiprakash participated in crime in question. Both the appellants Jayaprakash and Ramdhani had no role to play, therefore, charge under Section 342 and 376(2)(g) of IPC is not established against them.

13. Accordingly CRA No.336 of 1999 preferred by appellant Jaiprakash Singh and CRA No. 337 of 1999 preferred by appellant Ramdhani are allowed. Their conviction and sentence under Sections 342 and 376(2)(g) of the IPC is hereby set aside. They are acquitted from the said charges. It is reported that the appellants Jaiprakash Singh and Ramdhani are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

14. Heard on the point of sentence of appellant Somaru Singh.

The trial Court awarded RI for ten years for offence of rape under Section 376 (2)(g) of IPC which is modified and he is awarded sentence of seven years for offence under Section 376(1)

of IPC while fine amount awarded by the trial court shall remain in tact.

15. Accordingly, CRA No. 338 of 1999 preferred by appellant Somaru Singh is partly allowed. The appellant Somaru Singh is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant Somaru Singh 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 15-4-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju