

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03-12-2019

Delivered on 13 -12-2019

CRA No. 1138 of 2001

- Birbal Kumar Nishad s/o. Budhram Nishad aged about 21 years, occupation Agriculturist, resident of village Mudena, Police Station Mahasamund, Tahsil Mahasamund, Dist. Mahasamund (Chhattisgarh)

---- Appellant

Versus

- State of Chhattisgarh through Police Station Mahasamund, Tahsil Mahasamund, Dist. Mahasamund (CG).

---- Respondent

CRA No. 1152 of 2001

- Annu Nishad s/o. Chamru Nishad, aged about 21 years, r/o. Village Mudena, Police Sttion and tahsil Mahasamund, District Mahasamund (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Mahasamund.

---- Respondent

For Appellants : Mr. Shrawan Kumar Chandel and
Mr. Anshul Tiwari, Advocates
appeared on behalf of Mr. Manoj
Paranjpe, Advocate.

For respondent/State : Mr. Afroz Khan, P.L.

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

1. As both the aforesaid appeals arise out of same judgment/incident, they are heard analogously and are being disposed of by this common judgment.
2. Both these appeals are preferred against the judgment of conviction and order of sentence dated 7-11-2001 passed by the First Additional Sessions Judge, Mahasamund in Sessions Trial No. 153 of 2001 wherein the said Court convicted the appellant Birbal Kumar Nishad for commission of offence under Sections 376(1) and 342 of the IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,000/- and RI for one year and fine of Rs.1,000/- with default stipulations. The trial court convicted the appellant Annu Nishad for commission of offence under Section 342 of the IPC and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.1,000/- with default stipulations.
3. In the present case, prosecutrix is PW/8. As per version of prosecution, on 25-3-2001 in the evening at about 6 'O' clock prosecutrix went for easing herself and when she was returning appellants met her and appellant Birbal caught her hand and forcibly took her to one uncompleted house and committed rape on her. She returned to her house at about 4 'O' clock in the morning and reported the incident to her grand-father and grand-mother and also to villagers. FIR was lodged at Police Station Mahasamund. 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) Case of the prosecution is depended on interested witnesses and there was a consent and love affair between the appellant and prosecutrix, therefore, finding of the trial court is not sustainable.
- ii The findings recorded by the trial court suffer from apparent inconsistencies and infirmities which is overlooked by the trial court.
- iii) PW/3 Munnalal Chandrakar tried to settle the dispute between the parties and hence it is a case of consent, therefore, finding of the trial court is liable to be set aside.

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. Prosecutrix (PW/8) deposed before the trial court that on the date of incident she had gone to ease herself at about 7.00 pm along with one Yamuna and Manju and when they were returning Yamuna and Manju moved ahead and appellants Birbal Kumar and Annu caught hold her hand and dragged her. She was taken to one uncompleted house where appellant Birbal removed her garments and committed sexual intercourse with her twice. She has been kept there upto next morning. After returning to her house, she narrated the incident to her grand-father and grand-mother and also to villagers and thereafter lodged report at Police Station Mahasamund as per Ex.P/6 on next day. Version of this witness is supported by FIR (Ex.P/6) which is promptly lodged on next day of the incident. Prosecutrix has been subjected to incisive and searching cross examination but nothing could be elicited in favour of defence. Version of prosecutrix is supported by version of Bharatlal (PW/1), Mannulal Chandrakar (PW/3) and Satrugan (PW/9). It is further supported by version of Dr. Alaba Parhal (PW/4) who examined the prosecutrix and opined that she has been sexually assaulted within 24 – 48 hours of the examination. This witness examined the prosecutrix on 26-3-2001 at 4.00 pm,. in the evening. It is again supported by version

of Dr.Ghyanshyam Chandrakar (PW/2) who examined the appellant Birbal and found him capable of intercourse.

8. Looking to the entire evidence, it cannot be said that it is consensual intercourse. There is nothing on record that the appellant has been roped with false charge. 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. When her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence the appellants from the evidence adduced by the prosecution, therefore, argument advanced on behalf of the appellants is sustainable. The act of appellant Birbal falls within mischief of Section 376(1) and 342 of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

9. Heard on the point of sentence.

The trial Court awarded RI for ten 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.

10. Accordingly, CRA No. 1138 of 2001 appeal preferred by appellant Birbal Kumar Nishad being devoid of merits is liable to

be and is hereby dismissed. Appellant Birbal Kumar Nishad 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 said 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 30-4-2020.

11. So far as appellant (CRA No.1152 of 2001) preferred by appellant Annu Nishad is concerned, there is evidence regarding wrongful confinement of prosecutrix which falls within mischief of Section 342 of IPC and same is hereby affirmed. From the record, it is clear that the appellant Annu Nishad has suffered full jail term and released from jail, therefore, no further order for his arrest etc., is required.

12. Accordingly, CRA No.1152 of 2001 is also dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju