

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1104 of 2012**

Khemraj Gada s/o Dilip Gada, age about 25 years, R/o Village Boirguda, Police Station Devbhog, Post Office, Devbhog, District Gariyaband (CG)

---- Appellant

Versus

State Of Chhattisgarh Through the District Magistrate Gariyaband, District Gariyaband (CG)

---- Respondent

For Appellant : Ms. Mandavi Bhardwaj, Advocate

For State/ Respondent : Mr. Raghvendra Verma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****21/01/2019**

1. This appeal is preferred against the judgment dated 06/10/2012 passed by the Additional Sessions Judge, Gariyaband, District Gariyaband (CG) in Sessions Trial No.21/2012, wherein the said Court has convicted the appellant for commission of offence under Sections 363, 376(1) read with Section 511 and 323 of the IPC and sentenced to undergo R.I. for 7 years and fine of Rs.2000/-; R.I. for 7 years and fine of Rs.3000/-; and R.I. for 1 year, respectively with default stipulation. All the sentences were directed to run concurrently.

2. In the present case, prosecutrix is PW6. As per version of prosecution, prosecutrix is aged about 11 years and she was in

custody of lawful guardianship of her parents at village Boirguda. On the date of incident, i.e. 20.12.2011, some function held in the house of the prosecutrix and after finishing the function, the prosecutrix was standing near the door of her house alone, at that time, the appellant came and told her that her elder brother is in his house and he called her. After that the prosecutrix went along with the appellant and when she could not find her elder brother in the house of the appellant, she was returning to her house, but the appellant caught hold of the prosecutrix forcefully and taken her towards Badigaon. She started alarming the sound to which the appellant threatened her and taken away to the agricultural field. It is alleged that the appellant tried to commit sexual intercourse with the prosecutrix and when she was forcefully lied on the surface, she sustained injury on the body. The matter was reported and investigated and after completion of trial, the appellant was convicted and sentenced as above.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits as under :

(i) Evidence of the prosecutrix and other witnesses is contradictory in nature and as there is some enmity between the appellant and brother of the prosecutrix regarding drinking of liquor, the appellant has been falsely roped in the charge.

(ii) Dr. Anju Sonwani (PW10) deposed that there is possibility of falling down on the hard surface object and therefore, injuries found on the body of the prosecutrix is not corroborative piece of evidence.

(iii) The examination of medical expert is not supportive piece of evidence regarding commission of rape.

(iv) The trial Court has not appreciated the evidence in its true prospective and came to a wrong conclusion which is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of oral and documentary evidence which is just and proper and the same is not liable to be interfered with invoking jurisdiction of appeal.

6. From the evidence of the prosecutrix it is established that the appellant took her on the false pretext that her elder brother is present in his house and he is calling her and when she reached to the house of the appellant, her brother was not present there and that is why she was returning from the house of the appellant, but he pressed her mouth and taken her to the nearby field and committed rape on her. Version of this witness is supported by the version of Kuleshwar Nagesh (PW2), Gangaram (PW7) and Dashrath (PW8), who have found the appellant undressed on the spot. All the witnesses have been subjected to incisive cross-examination, but remained unshaken. There is nothing on record to say that the appellant has been falsely

roped on account of grudge or otherwise. There is nothing on record to say that the prosecutrix and other witnesses are unreliable. Version of all the witnesses is supported by the version of Dr. Anju Sonwani (PW10), who examined the victim on 21.12.2011 and found following injuries:

- (i) Abrasion reddish brown colour of 2 cm x 1 cm on dorsal spine
- (ii) Abrasion of 2 cm x ½ cm near both buttocks

7. As per version of medical expert, injuries were caused since 12 to 24 hrs. of the examination. Version of this witness is unrebutted during examination and there is no other medical expert opinion contrary to the opinion of this medical expert. Therefore, it is established that the prosecutrix sustained simple injuries during the incident caused by the appellant. From the evidence of Kuleshwar Nagesh (PW2), Gangaram (PW7) and Dashrath (PW8), who are family members, age of the prosecutrix is between 10 to 11 years. This evidence is also not rebutted, therefore, it is established that the prosecutrix was minor and she was in custody of her lawful guardians. Direct and medical evidence is supported by the FIR Ex. P/5, which is lodged on next day of the incident i.e. 21.12.2011 at Police State Devbhog naming the appellant as culprit and his act for attempting to rape is also mentioned. Looking to the FIR and other evidence, the trial Court opined that it is a case of kidnapping and attempt to rape and again it is an offence of causing voluntarily simple hurt. There is

no material contradictions in the statements of the prosecutrix and other witnesses regarding commission of offence.

8. The trial Court has elaborately discussed the entire evidence and recorded finding of conviction of the appellant for the offences mentioned above. After re-assessing the evidence, this court has no reason to record a contrary finding. Accordingly, the conviction of the appellant is hereby affirmed. The trial court has awarded sentence of R.I. for 7 years, R.I. for 7 years and R.I. for 1 year for the offence under Sections 363, 376(1) r/w Section 511 and 323 of the IPC which cannot be termed as harsh, disproportionate or unreasonable. Therefore, the sentence part is also not liable to be interfered with.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

10. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE