

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 13-11-2019
Judgment delivered on 06-12-2019

CRA No. 134 of 2003

- Dhani Ram s/o. Satte Singh Gond, aged about 32 years, r/o. Village Narayahnpur, Police Station Bhanupratappur, District Kanker (CG).

---- Appellant

Versus

- State of Chhattisgarh through Station House Officer, Bhanupratappur, Dist. Kanker.

---- Respondent

For Appellant : Mr. Basant Dewangan,
Advocate

For respondent/State : Mr. Ishwar Jaiswal, 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 30-09-2002 passed by VI Additional Sessions Judge (FTC) Kanker, CG in Sessions Trial No. 549 of 2002 wherein the said Court has convicted the appellant for commission of offence under Sections 454, 376 (1) and 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.500/-, RI for ten years and fine of

Rs.1000/- and RI for one year and fine of Rs. 500/- with default stipulations.

2. As per prosecution case, appellant entered into the house of prosecutrix situated at Kukripara, Narayanpur on 4-7-2001 at about 12.00 noon when her family members were out of station and committed sexual intercourse with her without her consent and against her will and threatened her to kill. 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) Doctor has not supported the version of prosecutrix, therefore, it may be a case of consent and charge under Section 376(1) of IPC is not made out.
- ii As per version of prosecutrix, her minor child was also in the house which makes the prosecution case improbable
- lii) Statements of prosecution witnesses are full of contradictions, omissions and improvements, therefore, finding arrived at

by the trial court is not sustainable.

- iv) FIR was not sent immediately to the concerned Magistrate as required under Section 157 of Cr.P.C.
- v) The trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

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. The first question for consideration of this court is whether appellant entered into house of the prosecutrix and committed sexual intercourse with her without her consent and against her will. In the present case, prosecutrix is PW/1. She deposed before the trial court that she was alone in her house in day time where appellant entered into her house by

crossing the wall, made her lay down on the earth, threatened her to kill and thereafter committed sexual intercourse with her. On her cries one Manbai reached to the spot and separated the appellant from the body of the prosecutrix. She further deposed that the appellant scolded said Manbai. She further deposed that one Panchayat was convened in which appellant was willing to pay some amount for settlement. From the entire evidence of the prosecutrix, it is clear that the incident took place in day time at 12.00 noon. There is eye-witness of Manbai PW/2 who supported the version of prosecutrix. Sukhlal (PW/3) also found the appellant outside the house of the prosecutrix. Annuram (PW/4), Vinam (PW/5) and Surju (PW/6) supported the version of prosecution. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Version of this witness is supported by version of Dr. Anand (PW/7) who examined the appellant and found him capable of intercourse. Version of all the witnesses is supported by FIR which is lodged on the day of incident ie., on 4-7-2001 at Police Station Bhanupratappur. Version of prosecutrix is constant right from day of the incident. It is quality of the evidence which has to be weighed. In the present case, not only evidence of prosecutrix (PW/1) but other eye-witnesses namely Manbai

(PW/2) inspires confidence who reached on the spot on cries of prosecutrix.

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. When her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence. There is no delay in lodging FIR, therefore, there is nothing on record to create doubt in version of the prosecutrix.

8. 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. Looking to the entire evidence, it is clearly established that the appellant committed house-trespass in day time in the house of the prosecutrix, committed rape on her and threatened her to kill, therefore, the act of the appellant falls within mischief of Section 454, 376(1) and 506 Part II of the IPC for which the trial court convicted him. Argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offence 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 and same is hereby upheld.

10. 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