

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 541 of 2009**

- Lakhanlal S/o Dhansingh Yadav aged about 46 years, R/o village Kukrapani Police Station Bodla, District Kabirdham (CG)

---- Appellant**Versus**

- State of Chhattisgarh through Police Station, Bodla, District Kabirdham (CG)

---- Respondent

 For Appellant : Mr. Rakesh Pandey Advocate
 For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****03.01.2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26.6.2009, passed by the Sessions Judge, Kabirdham (Kawardha) (CG), in Sessions Trial No. 48 of 2008 wherein the said Court has convicted the appellant for commission of offence under Section 376 (1) of the IPC and sentenced him to undergo R.I. for 10 years and fine of Rs.1000/- with default stipulation.

2. In the present case, prosecutrix is PW5, who is daughter of the appellant. As per version of prosecution, the prosecutrix was all alone in the house on 22.3.2008 at about 3.00 pm because other family members had gone to some other house. The appellant who is father of the prosecutrix committed rape with the prosecutrix. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

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

- i) In the FIR and statement recorded under Section 161 Cr.P.C. the prosecutrix has not stated anything about commission of rape by the appellant, therefore, her version before the Court is not acceptable.
- ii) Prosecution has not given any explanation for delay in lodging the FIR which is more than 4 days
- iii) The trial Court has overlooked the material contradictions and omissions in the statement of the prosecution witnesses, therefore, prosecution story is not reliable
- iv) As ingredients of Section 376 IPC are missing the conviction recorded by 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. Prosecutrix (PW5) has deposed before the trial Court that on the date of incident the appellant made her lie-down in the cot, undressed and came over her and committed sexual intercourse with her. She further deposed that after commission of rape the appellant threatened her to kill if she will narrate the incident to anyone. From the evidence of this witness, her maternal aunt namely- Kamlabai entered into the house and she saw the

incident. Version of this witness is supported by the version of Kamlabai (PW2) who is an eye witness account to the incident and as per version of this witness, she saw the appellant lying over the prosecutrix in a cot and both were undressed. Version of this witness is supported by the version of Dashrath (PW1) to whom the incident was informed by Kamlabai. 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 the version of Dr. Pawan Kumar (PW4), who examined the appellant and found him capable of committing sexual intercourse.

7. True it is that commission rape is not mentioned in the FIR Ex. P/1 or statement recorded under Section 161 Cr.P.C. of the prosecutrix, but the fact remains that FIR and statement recorded under Section 161 Cr.P.C. is not substantive piece of evidence. Substantive piece of evidence is deposition before the Court where defence side has all the opportunities to cross-examine the witnesses. From the evidence of all the witnesses it is not contradicted on material point from earlier version of the prosecutrix and other witnesses, therefore, arguments advanced on this count is not acceptable. There is no reason for the prosecutrix to rope in a false case to her father and there is no reason for Kamlabai (PW4) to depose against the appellant who is her close relative.

8. It is true that there is delay of four days in lodging the report at Police Station. But the fact remain that 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.

9. 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. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

10. After re-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 prosecution witnesses.

11. The trial Court has considered all the aspect whether factual or legal elaborately and this court has no reason to substitute a contrary finding. The arguments advanced on behalf of the prosecution is not sustainable. Accordingly, conviction of the appellant is hereby affirmed.

12. Heard on the point of sentence.

The trial Court hast awarded sentence for R.I. for 10 years for the offence under Section 376 (1) IPC and looking to the inhumaneness and gravity of the offence, the sentence awarded by the trial Court cannot be termed as harsh, disproportionate and unreasonable. The sentence part is also not liable to be interfered with.

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

14. 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

