

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-01-2019
Judgment delivered on 07-02-2019

CRA No. 868 of 2009

- Mratyunjay Vaishnav @ Lalu aged about 28 years, s/o. Ramlakhan Vaishnav, r/o. Village Thathari, PS Baradwar, District Janjgir Champa (CG).

---- Appellant

Versus

- The State of Chhattisgarh through Station House Officer, PS Baradwar, District Janjgir Champa (CG).

---- Respondent

For Appellant : Ms. Nirupama Bajpai, Advocate.

For respondent/State : Mr. V.B. Singh, Panel Lawyer

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 1-10-2009 passed by the Additional Sessions Judge, Sakti, Dist. Janjgir Champa (CG) in Sessions Trial No. 102/2009 wherein the said Court has convicted the appellant for commission of offence under Sections 376(1), 342, 323 and 506 Part 2 of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- RI for six months, RI for six months and RI for one year with default stipulations.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on 22-3-2009, prosecutrix went to sleep after dinner and in the night at about 1.30 she heard the noise of knocking the door. In apprehension of her brother, she opened the door and saw the appellant standing at the door. The appellant dragged her inside of his Betel shop (Paan Thela) and locked the chain from inside, removed her garments forcefully, bet her with hands and fists and threatened her to kill and committed sexual intercourse with her. On hearing her cries, her father and elder brother came there and took the prosecutrix to their house where she disclosed the incident of rape. 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) As per version of prosecutrix, she was dragged out near by the cot where her sister was sleeping but she has not made any attempt to call her sister for help.
- ii As per version of PW/4 Keshar Kumar, when he woke up in the night at 1.00 – 1.30, he found that prosecutrix was found

not found on her bed then he and his father along with one Kailash Kumar came out of the house for searching the prosecutrix and when they reached near Betel shop, they heard her cries and after removing the door of Betel shop found the prosecutrix naked and appellant was there. Version of this witness is not reliable because actually there was no noise from inside the room.

- iii) Prosecution has failed to seize the undergarments of the prosecutrix and medical evidence does not support the prosecution case.
- iv) Injuries whatsoever found on the body of the prosecutrix were arisen due to beating by her father.
- v) The trial Court ignored the omissions and contradictions in the statements of the prosecution witnesses, therefore finding of the trial court is liable to be reversed.

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. PW/1 prosecutrix deposed before the trial Court that on the date of incident at night she was sleeping in the room of her house and heard noise of knocking the door. She further deposed that on apprehension of her brother, she opened the door where the appellant was standing at the door and dragged her to his Betel shop. When she tried to cry he pressed her mouth, threatened her to kill and thereafter he undressed her and committed rape on her. Version of this witness is supported by version of Kailash Dewangan (PW/3) who found the prosecutrix and the appellant in Betel shop and door of the Betel shop was removed by them. Version of both the witnesses is supported by version of Kesar Kumar Dewangan (PW/4). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence and their version remained unshaken.

7. In the present case, date of incident is 23-3-2009 and report was lodged at Police Station Baradwar on the same day naming the appellant as culprit and act of rape is also mentioned in the said report. All the witnesses are stable on material point, therefore, their version cannot be discarded.

8. 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,

9. Report was lodged on the same day of the incident, therefore, there is no delay in lodging the report. 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.

10. In the present case, prosecutrix and her family members boldly decided to lodge the complaint on the same day, therefore, their version is inspiring confidence of the Court. There is nothing on record to say that the appellant has been falsely roped with charges. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Looking to the entire evidence, argument advanced on behalf of the appellant is not sustainable. The trial Court evaluated the entire evidence and looking to the evidence recorded a finding of guilt for all the offences.

11. Dr. Smt. C.K. Singh (PW/11) deposed before the trial Court that on examination of the prosecutrix she noticed the following injuries on her body.

- i) Diffuse contusion over back left side of whole scapula upto over spiral wound, reddish.

- ii) Contusion over lumbar region right side in the size of 4.5 cm x 2.5 cm oblique.
- lii) Swelling and abrasion over dorsal of right foot in the size of 2.0 cm x 1.0 cm

She opined that duration of incident occurred within 24 hours and the injuries might be caused by hard and blunt object.

There is no other medical expert's opinion contrary to opinion of this medical expert, therefore, looking to the entire evidence, charge of voluntarily caused hurt to prosecutrix is also established. Prosecutrix is first confined in Betel shop and she was unable to move from four corners of that shop, therefore, offence under Section 342 of IPC is also established against the present appellant. Again she was confined and threatened to kill which shows determination of the appellant, therefore, charge under Section 506 Part II of IPC is also established.

12. 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 and this court has no reason to substitute a

contrary finding. The act of the appellant falls within the mischief for which the trial Court has convicted the appellant and same is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded RI for seven 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.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju