

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment reserved on 17-01-2019

Judgment delivered on 30-01-2019

**CRA No. 175 of 2010**

- Kawalsai Rajwade S/o Abhay Lal Rajwade, aged about 40 years, occupation. Service R/o Village Anuj Nagar, Police Station Jainagar, District Surguja (CG).

---- Appellant

**Versus**

- State of Chhattisgarh through SHO, PS Jainagar, District Surguja (CG).

---- Respondent

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 For Appellant : Mr. Jitendra Shrivastava, Advocate

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 For respondent/State : Mr. Vijay Bahadur Singh, Panel Lawyer
 

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-1-2010 passed by First Additional Sessions Judge, Surajpur, Sessions Division Surguja (CG) in Sessions Trial No. 340 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 rigorous imprisonment for seven years and to pay fine of Rs.500/- with default stipulations.

2. As per version of prosecution, on 2-7-2008 at about 5.00 pm the appellant caught the prosecutrix (PW/1), dragged her to one kitchen garden and thereafter committed forceful sexual intercourse with her against her will and without her consent. 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) The date of incident is 2-7-2008 whereas the report was lodged on 17-8-2008 i.e., after delay of 46 days and same is not explained.
- ii The family members including father-in-law, brother-in-law and sister-in-law of the prosecutrix were present in the house, but no effort was made to lodge the report within shortest time.
- iii) Version of P/3 Lalman Singh and Heera Lal (PW/4) seems to be concocted as even after coming to know about the incident , they have not tried to lodge prompt report.
- iv) The trial Court has not considered the evidence of DW/1 Rambharos that there was love affair between the appellant and prosecutrix and he has been falsely implicated.

- v) Evidence collected by the prosecution is not sufficient to record finding of conviction, therefore, finding of the trial Court is liable to be reversed.

In support of his arguments, he placed reliance on the decisions of Hon'ble Supreme Court and this Court in the matter of **Rajesh Patel vs. State of Jharkhand<sup>1</sup>**, **Sadashiv Ramrao Hadbe vs. State of Maharashtra<sup>2</sup>**, **Radhu vs. State of Madhya Pradesh<sup>3</sup>**, **Chintamani vs. State of MP<sup>4</sup>** and **Dinesh Sahu vs. State of CG<sup>5</sup>**

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. In the present case, prosecutrix is PW/1. As per version of this witness, she was grazing cows near Baniyapara of her village Anujnagar and at the same time appellant reached there, caught hold her and took her to Sugarcane field where he removed her

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1 2013(3) SCC 791

2 2006 (10) SCC 92

3 2007 (12) SCC 57

4 2012(4) CGLJ 511

5 ILR 2018 Chhattisgarh 373

dress, laid her down and inserted his penis into her vagina and committed rape on her. As per version of this witness, her husband had gone to Raigarh for labour work and he returned only after one month of the incident and thereafter she informed him about the incident and lodged the report at Police Station Jainagar which is Ex.P/1. Version of this witness is supported by version of Parasram (PW/2), Lalman Singh (PW/3) and Heeralal (PW/4). All the witnesses have been subjected to searching cross examination, but the fact constituting offence of rape is not rebutted. There is nothing on record to say that prosecutrix has any grudge against the appellant to rope him in a false charge. From the cross-examination of this witness, nothing could be elicited in favour of defence. Version of this witness is also supported by Dr. J.S. Saranta (PW/7) who examined the appellant and found him capable of intercourse.

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

8. It is true that there is delay in lodging the report at Police Station. The date of incident is 2-7-2008 and report is lodged on 17-8-2008 as per Ex.P/2.. 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 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 delay in lodging the FIR. There is no material contradiction in the statements, therefore, defence version is not acceptable.

9. In the present case, husband of the prosecutrix was not available for one month because he had gone to work at Raigarh and report was lodged only when her husband returned to village, therefore, case of the prosecution cannot be thrown overboard only on account of delay. Looking to the facts and circumstances of the case, this court is of the opinion that the case laws cited on

behalf of the appellant are distinguishable from the facts of the present case because in the matter of Sadashiv Ramrao Hadbe (supra), one medical practitioner was charge-sheeted for offence of rape and it is found that large number of persons were present near the vicinity, therefore, story is found highly improbable. In the matter of Rajesh Patel (supra), prosecutrix and the appellant were class-mates and had good acquaintance with each other as they were exchanging books. In the matter of Radhu (supra), one another lady was present in a small house where rape was committed, therefore, story is found highly improbable. In the matter of Dinesh Sahu (supra), relatives were sleeping in the same room where incident of rape is occurred. In the matter of Chintamani (supra), there was dispute in the village and the cases are of different angles.

10. 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. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay. In the present case, prosecutrix was not in company of her husband that is why there is delay of 46 days in lodging the report after returning of her husband and same is properly explained. Therefore, delay has no adverse affect in the facts and circumstances of the case.

11. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellant falls within mischief of Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

12. 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 is minimum and same cannot be termed as harsh or unreasonable or disproportionate. 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. The trial Court will prepare supersession 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 15-4-2019.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**Judge**

Raju