

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.325 of 2009**

1. Suresh, S/o. Chamar Singh Nishad, aged about 20 years, Caste Kenwat, R/o. Village Chandkhuri, PS Basana, District Mahasamund (Chhattisgarh)
2. Rameshwar @ Chhotu Nishad, S/o. Guman Singh Nishad, aged about 21 years, Caste Kenwat, R/o. Village Bade Temori, PS Basana, District Mahasamund (Chhattisgarh)

---- Appellants**Versus**

- State Of Chhattisgarh through Police Station Saraipali, District Mahasamund (Chhattisgarh)

---- Respondent

For the appellants : Smt. Anju Ahuja, Advocate

For the State : Shri Raghavendra Verma, Govr. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28.02.2019.**

1. The appeal is directed against judgment dated 15.01.2009 passed by Sessions Judge, Mahasamund (CG) in Session Trial No.62/2008 wherein the said Court convicted both the appellants for commission of offence under Sections 376(2)(g) of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of 5,000/- each with default stipulation.

2. In the present case, prosecutrix is PW-1. As per the version of the prosecution, the prosecutrix found missing since 30.4.2018 at 10.00 am and report in this regard was lodged on 03.5.2008. It is alleged that the appellants kidnapped the prosecutrix with promise to marry her and she was forced and seduced to illicit intercourse and both the appellants have committed rape on her. The matter was

reported and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for appellants submits as under:

(i) The prosecutrix was with the appellants for four months and during this period she did not disclose anything about the incident and never tried to raise voice to rescue herself, therefore, version of the prosecution is under cloud.

(ii) The prosecutrix was having affair with appellant Rameshwar @ Chhotu for the last one year, therefore, it is a case of voluntary consent and no case is made out.

(iii) The trial Court has overlooked the material contradictions and omissions in the statements of the prosecution witnesses that is why the finding of the trial Court is not liable to be sustained.

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 marshaling 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 the record of the Court below.

6. Case of the prosecution is based on the sole testimony of prosecutrix (PW-1). Other witnesses have deposed what is informed to them by the prosecutrix or the witnesses who assisted the prosecution during the investigation after registration of FIR. The prosecutrix deposed before the trial Court that the appellants took her with him and appellant Rameshwar promised her to marry that is why she accompanied them in motor cycle. As per the version of

this witness, appellant Suresh committed rape on her. Version of this witness is unshaken during cross-examination regarding appellant Suresh. There is nothing in her testimony that she gave consent for physical relation with appellant Suresh. Her version is supported by the statement of other witnesses and again it is supported by medical evidence of Dr. Amritlal Rohelkar (PW-7), who examined appellant Suresh and found him capable to do sexual intercourse. Appellant Suresh is named in the FIR (Ex-P/16) as culprit and his act of commission of rape is also mentioned in the said FIR. There is nothing on record to say that the prosecutrix had falsely implicated appellant Suresh with the charges and there is nothing on record to disbelieve the version of the prosecutrix and other witnesses.

7. True it is that there is delay in lodging the FIR, but the fact remains that this appellant stayed with the prosecutrix for sufficient period. On overall assessment of the evidence, the trial Court opined that appellant Suresh committed rape with the prosecutrix and after reassessing the evidence, this Court has no reason to record a contrary finding. Act of appellant Suresh falls within the mischief under Section 376(1) IPC. The trial Court sentenced him RI for ten years which cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is also not liable to be interfered with.

8. Accordingly, appeal filed on behalf of appellant Suresh is hereby dismissed. He is reported to be in jail, therefore, no further order is required.

9. So far as appellant Rameshwar @ Chhottu is concerned, prosecutrix admitted in her cross-examination that she had love

affair with appellant Rameshwar for one year and from her statement it is clear that she herself moved with this appellant in a motor cycle and stayed for long. Though she deposed that this appellant promised her to marry, but the fact remains that the prosecutrix has stayed with this appellant about four months and made frequent physical relation with him. Again she admitted in her cross-examination that she left her place with this appellant because she had love affair with him. Looking to the entire version of the prosecutrix, it cannot be said that physical relation was maintained without consent of the prosecutrix by this appellant, therefore it cannot be hold that the act of this appellant is without consent of the prosecutrix and against her will. The trial Court has not evaluated the evidence on this count, therefore, finding of the trial Court is not sustainable.

10. Accordingly, appeal filed on behalf of appellant Rameshwar @ Chhotu is allowed. His conviction and sentence passed by the trial Court is set aside. He is acquitted of the charges framed against him. He is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

11. With the above modifications, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE