

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 800 of 2010

- Bodu @ Botu @ Chandra Kumar Jaisawal s/o. Roop Narayan Jaisawal, aged about 27 Years r/o. Village Tilkeja, Police O.P. Unga of Police Station Kotwali, Korba, District Korba, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh through Police Station Kotwali, Korba, District Korba, Chhattisgarh.

---- Respondent

 For Appellant : Mr. Rakesh Pandey Advocate
 appears as Amicus Curiae.

For respondent/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****4-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26-10-2010 passed by the Sessions Judge, Korba, District Korba (CG) in Sessions Trial No. 66 of 2007 wherein the said Court has convicted the appellant for commission of offence under Sections 342, 376 (1) and 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for three month, RI for seven years and to pay fine of Rs.6,000/- and RI for one year with default stipulations.

2. In the present case, prosecutrix is PW/1. As per version of the prosecution, on the date of incident i.e., 11-6-2007 at about 3.30 p.m., at village Tilkeja, present appellant confined the prosecutrix, threatened her life and forcefully committed rape on her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. The appeal is preferred on the following grounds:

- i) There is no eye-witness in the matter and the evidence of prosecutrix is false and unreliable.
- ii The link of prosecution story is broken at many points which shows innocent of the appellant.
- lii) Version of prosecution witnesses is contradictory and same cannot be basis for conviction, 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. Prosecutrix (PW/1) deposed before the trial Court that on the date of incident she was returning to her home where appellant pressed her mouth, took her to his house and closed the door. She further deposed that the appellant threatened her to kill and thereafter undressed her and undressed himself and inserted his penis into her vagina and committed sexual intercourse with her forcefully. Version of this witness is supported by version of Lalit Kumar (PW/3) who is father of the victim, Harishankar Shrivastava (PW/4) and Kuleshwari Bai (PW/5) who is mother of the victim. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Version of this witness is supported by the version of Dr. K.S. Kanwar (PW/7) who examined the appellant and found him capable of intercourse. Again, it is supported by FIR (Ex.P/1) which is lodged at Police Station Uрга on the date of incident i.e., 11-6-2007 in which name of the appellant is mentioned as culprit and his act of commission of rape is also mentioned.

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. In the present case 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.

9. 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. The trial Court has considered the entire evidence and recorded finding of conviction. Looking to the clinching evidence, argument advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief for which the trial Court has convicted the appellant and same is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded minimum sentence for commission of rape i.e., seven years and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term and he has been released from jail after completion of his full jail term, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju

