

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 28-1-2019
Judgment delivered on -31-01-2019

CRA No. 95 of 2010

- Suresh Kumar Yadav s/o. Mantaram Yadav aged about 20 years, r/o. Khamhardih Basti, near Kumud Kirana Stores, P.S. Pandari, District Raipur.

---- Appellant

Versus

- State of Chhattisgarh through Police Station Pandri, District Raipur. (CG).

---- Respondent

For Appellant : Mr. Abhihit Sarkar, 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 7-12-2009 passed by 14th Additional Sessions Judge (FTC), Raipur, District Raipur, in Sessions Trial No. 46 of 2009 wherein the said Court has convicted the appellant for commission of offence under Sections 450, 506 (b) & 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.500/- and RI for one year and to pay fine of Rs.500/- and RI for seven years and to pay fine of Rs.500/- with default stipulations.

2. As per prosecution case, on 2-8-2009 at about 10.00 pm at night, prosecutrix came out from her house to wash her hands before serving the meals to her husband. The accused was sitting near her house and teased the prosecutrix and when she returned inside the house, appellant followed her to which the prosecutrix complained to the people of the locality and they stopped the appellant from harassing her, but the appellant did not heed their words. It is alleged that when she returned to her house the appellant also entered into her house and asked her husband to take meals outside the house. Looking to the aggressive attitude of the appellant, husband of the prosecutrix came out of the house and thereafter accused forcibly closed the door of the house and committed rape on her. 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 story put-forth by the prosecution is improbable because husband of the prosecutrix was inside the house and he did not dare to intervene in the matter and tried to rescue his wife, therefore, finding of the trial court is not sustainable.

- ii Conduct of the prosecutrix is suspicious as she did not inform about the incident to neighbors and did not resist during the course of the incident.
- lii) No injuries were found on the body of the prosecutrix, therefore, the story as alleged by the prosecutrix is under suspicion.
- iv) The trial Court has not evaluated the evidence in its true perspective and same 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 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, date of incident is 2-8-2009 and report was lodged on the next day i.e., 3-8-2009 at Police Station Pandri as per Ex.P/1 in which the name of the appellant is mentioned as culprit and his act of offence of

rape is also mentioned in the said report stating whole particulars. Prosecutrix deposed before the trial Court as PW/1 and as per version of this witness, appellant first teased her outside the house and then threatened the people of locality and again entered into her house and after eviction of her husband committed rape on her. Version of the prosecutrix is supported by version of PW/2 Gopal Ram Sahu who is husband of the prosecutrix and PW/3 Khemlata to whom the incident was informed just after the incident. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. There is no material omission in the statement of prosecutrix or her husband. Version of the prosecutrix is also supported by Dr. Nagre (PW/4) who examined the prosecutrix on 3-8-2009 and opined that intercourse has been committed with her. Again it is supported by version of Dr. Jnanesh Kumar Choube who examined the appellant on 15-1-2009 at District Hospital Raipur and opined that he is capable to perform intercourse. There is nothing against the statement of medical expert, therefore, the story put-forth by the prosecution is supported by version of medical evidence. From the evidence it is clear that the appellant had shown his attitude of aggressiveness and created atmosphere of terror

in the mind of the people of locality and husband of the prosecutrix and then committed rape on her.

7. From the statement of the prosecutrix and other witnesses, it is clear that atmosphere at the time of incident was under tense that is why no one intervened in the matter. Everyone has his own way of repercussion, some tried to intervene, some kept silent and some fled away from the spot. It depended upon the nature of each individual and story cannot be said to be improbable because no one has acted any specific way. From the statement of the witnesses, it is clear that the appellant had dominating position in the locality and he misused his position in harassing the prosecutrix, therefore, it cannot be said that the act of the prosecutrix is unnatural.

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, but in the present case, there is ample

corroborative piece of evidence, therefore, argument advanced on behalf of the appellant is not sustainable.

9. In the present case, offence was committed on 2-8-2009 and report was lodged on the next day. 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. 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 considered all the facts and circumstances of the case and recorded finding of conviction.

11. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. House trespass is an offence which is punishable with imprisonment for life under Section 450 of IPC and rape is punishable under Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

12. So far as offence under Section 506 (b) of IPC is concerned, prosecutrix and other witnesses have not deposed before the trial Court that the appellant threatened the prosecutrix to kill. The charge is not for threatening the prosecutrix which is not substantiated by evidence. Mere words are not sufficient to establish the offence under Section 506 Part 2 of IPC, but it has to be established that the appellant was determined to execute his threat on the spot. From the evidence, it is not clear that the appellant was having any weapon to execute his threat, therefore, the word uttered by the appellant is mere fury which has sound, but no substance. Charge under Section 506 Part II of IPC is not established. The appellant is acquitted of the said charge and his conviction for offence under Section 506 Part II of IPC is set aside.

13. Heard on the point of sentence.

So far as offence under Section 450 and 376(1) of IPC is concerned, the trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC and RI for five years for offence of house-trespass under Section 450 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 so far as conviction and sentence of the appellant under Section 450 and 376(1) of IPC being devoid of merits is liable to be and is hereby dismissed. The trial Court will prepare super-session 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