

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 02-12-2019

Delivered on 13-12-2019

CRA No. 510 of 2011

- Ghina Ram s/o. Mosu, aged about 60 years, r/o. Village Bhabhpal, Police Station Lohandhiguda, Dist. Bastar (CG).

---- Appellant

Versus

- State of Chhattisgarh through Aarkshi Kendra Lohandhiguda, District Bastar (CG).

---- Respondent

 For Appellant : Mr. Vikas Shrivastava,
 Advocate

For respondent/State : Mr. Aman Kesharwani, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-3-2011 passed by 3rd Additional Sessions Judge, Jagdalpur, District Bastar in Sessions Trial No. 33 of 2009 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. The case of the prosecution, in brief, is that on 29-11-2008 at about 3.00 pm prosecutrix (PW/1) had gone to cut some vegetables in the forest and at the same time appellant came from back side, caught hold her, dragged her, removed her garments and thereafter committed sexual intercourse with her without her consent and against her will. On her cries, Sukalu (PW/2) and Ramchandra reached there and thereafter appellant fled away from the spot. 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) Findings arrived at by the trial court are based on presumption and surmises.
- ii There is delay in lodging the report which creates doubt on the part of prosecutrix.
- lii) There are major contradictions and omissions in the statement of prosecution witnesses which have been overlooked by the trial Court.
- iv) The doctor who examined the prosecutrix did not find any external or internal injury on

the body of the prosecutrix.

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 prosecutrix on 29-11-2008 at about 3.00 pm she had gone to cut some vegetables in the forest where appellant came from back side, caught hold her, dragged her, removed her garments and committed sexual intercourse with her. On her cries, Sukalu (PW/2) and Ramchandra reached there and thereafter appellant fled away from the spot. One panchayat was convened and thereafter report was lodged against the appellant. Version of this witness is unrebutted during cross examination. Version of prosecutrix is supported by version of PW/2 Sukalu and PW/3 Sukata. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of prosecutrix

is further supported by FIR (Ex.P/1) in which name of the appellant has been mentioned as culprit and his act of rape is also mentioned in the said FIR. There is nothing on record to say that the appellant has been falsely roped with charge.

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. When her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence against appellant. There is nothing on record to say that it is a consensual act, therefore, argument advanced on behalf of the appellant is not sustainable. that daughter of the prosecutrix reached to the spot while process was going on and again husband of the prosecutrix also reached to the spot and found the appellant in the company of the prosecutrix.

8. It is true that there is delay in lodging the report at Police Station. 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 act of the appellant falls within mischief of Section 376(1) of IPC.

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

11 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 cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

12. 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 released from jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju