

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 293 of 2011****Reserved on : 01.03.2019****Delivered on : 29.03.2019**

Lalit Sinha, S/o Lt. Bhuneshwar Prasad Sinha, Aged about 30 years,
R/o Sarvodaya Nagar, PS – New Rajendra Nagar, District – Raipur
(C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through the PS- New Rajendra Nagar,
District– Raipur (C.G.)

---- Respondent

For Appellant : Mr. T.K. Tiwari, Advocate.
For State/respondent : Mr. Afroz Khan, Panel Lawyer.

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

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 10.09.2010 passed by 14th Additional Sessions Judge (F.T.C.), Raipur (C.G.) in Session Trial No. 113/2010, wherein the said court convicted the appellant for commission of offence under Section 376 (2)(f) of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 1000/- with further default stipulations.
2. In the present case, prosecutrix is PW-1 who is aged about 6 years. As per version of the prosecution, on 08.05.2009 at about 5:30 pm., the appellant committed rape on prosecutrix. The matter was informed to mother of the prosecutrix namely Gayatri (PW-2). Prosecutrix was medically examined. The

matter was reported, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Whole case is cooked up by mother of the prosecutrix. The appellant was not alone present in the house at the time of offence and as per version of Gayatri (PW-2) and Pushpa (PW-3), other persons were also present at the time of quarrel between the appellant and his wife, therefore, case of the prosecution is not established.

(ii) The trial court has stretched its imagination for convicting the present appellant to a great extent not permissible under the law.

(iii) The trial court failed to appreciate evidence brought by the parties properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. The prosecutrix (PW-1) deposed before the trial court that the appellant pressed her mouth and committed rape on her. Version of the prosecutrix is unrebutted during cross-examination. Version of the prosecutrix is supported by

version of Gayatri (PW-2), Pushpa (PW-3) & Smt. Sarwantaka @ Guddi (PW-4). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. Version of direct evidence is supported by version of Dr. Pratiksha Chauhan (PW-9) who examined the prosecutrix and found secretion around vagina of the prosecutrix and discharge was also present. Dr. A.K. Baghel (PW-10) who examined the appellant deposed before the trial court that the appellant was capable of intercourse.
7. The date of incident is 08.05.2009 and report was lodged on the same day by Gayatri Sinha as per Ex.P/1 in which name of the appellant clearly mentioned and his act is also mentioned in the said FIR.
8. On overall assessment of the record, there is nothing to disbelieve version of the prosecution witnesses. There is nothing on record to say that the appellant has been falsely implicated on account of any grudge against the present appellant. Evidence of prosecution witnesses is of sterling quality and sufficient to establish guilt of the appellant.
9. The trial court has rightly evaluated the entire evidence and this Court has no reason to record contrary finding. Commission of rape by the appellant is offence punishable under Section 376 (2)(f) of IPC for which the trial court convicted the appellant and the same is not liable to be

interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence

10. The trial court awarded jail sentence of 10 years for commission of offence under Section 376 (2)(f) of IPC which is minimum sentence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge