

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 22-10-2019
Judgment delivered on 20-11--2019

CRA No. 2788 of 1999

- Ravindra Kumar aged 30 years, s/o. Chheduram, resident of village Amartal, Police Station Akaltara, Tahsil Janjir, District Janjgir-Champa, MP (Now CG).

---- Appellant

Versus

- The State of Madhya Pradesh (Now State of Chhattisgarh).

---- Respondent

For Appellant : Mr. Ratnesh Kumar Agrawal, Advocate.

For respondent/State : Mr. Raghavendra Verma, Govt. Advocate

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 8-10-1999 passed by the Additional Sessions Judge, Janjgir, Sessions Division Bilaspur, MP now CG in Sessions Trial No. 129 of 1998 wherein the said Court has convicted the appellant for commission of offence under Section 451 and 376 of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- and RI for seven years and to pay fine of Rs.1000/- respectively with default stipulations.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on the date of incident i.e., 5-1-1998 at about 12.00 noon when prosecutrix was alone in the house situated at village Amartal, the appellant entered into her house, caught hold her, pressed her mouth, took her to kitchen garden and made her lay down on the ground, removed her garments and committed sexual intercourse with her without her consent and against her will. At the time of incident, father of the prosecutrix went to village Jalmala in the house of sister of prosecutrix and her mother had gone to field. On 7-1-1998 when her father returned from village Jalmala she informed him about the incident and thereafter report was lodged against the present appellant. 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) Dr. Smt. Lalita Minj (PW/9) and Dr.Smt. M. Singh Thakur (PW/10) have not supported the version of prosecutrix, therefore, story put-forth by the prosecutrix is not dependable.
- ii Prosecutrix deposed that she narrated the incident to one Madan Singh Daheriya (PW/5) who is also not supporting her version. As per version of Madan Singh

Daheriya (PW/5) there is constant teasing by the appellant. Prosecutrix did not resist and struggle during incident which shows her consent.

- iii) Though prosecutrix deposed before the trial court that the appellant came from back side and caught her from back side but that is not stated before the Investigating Officer who recorded her statement under Section 161 of the Cr.P.C.

He placed reliance in the matter of **Simran Jain and others vs. Union of India and others, reported in (2014) 2 SCC 400 and Harendra Prasad and State of MP, reported in 1983 MP weekly notes, short note 210**

- 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. The question for consideration of this court is whether the appellant entered into the house of the prosecutrix to commit rape on her and committed sexual intercourse with her without her consent and against her will.
7. PW/1 prosecutrix deposed before the trial Court that on the date of incident her father went to the house of her sister at village Jalmala and her mother went to field and she was all alone in the house where appellant entered into her house, pressed her mouth, took her to kitchen garden and made her lay down on the ground. She further deposed that the appellant removed her Salwar and undergarments and thereafter committed sexual intercourse with her. She further deposed that the appellant threatened her during commission of crime. Version of this witness is supported by version of Lakhan Bai (PW/2) who is her mother and Sakhiram (PW/3) who is father of the prosecutrix. Version of these witnesses is again supported by version of Dr. K.N. Chandra (PW/4) who examined the appellant and found him capable of intercourse.
8. In the present case, date of incident is 5-1-1998 when father of the prosecutrix was out of place. He returned to his house on 7-1-1998 and thereafter report was lodged at Police Station on 8-1-1998. First Information Report is Ex.P/1 in which name of the appellant is mentioned as culprit and act of entering into her house and

commission of rape is also mentioned in the said report which corroborates the version of prosecutrix. 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. From the evidence of prosecutrix and her parents, it is clear that father of the prosecutrix was out of place and their version inspires confidence of the court. There is nothing non record to say that the appellant has been falsely roped with charges. There is no reason to disbelieve the evidence of above said witnesses. PW/5 Madan Singh Daheriya is not witness of the incident. In case of rape, if evidence of prosecutrix is dependable then version of other witnesses who were informed about the incident after commission

of offence is not significant. 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.

10. Medical evidence is only physical examination report and medical expert cannot be allowed to form opinion regarding commission of crime, therefore, medical evidence will not affect credibility of the prosecutrix. If prosecutrix would have been consenting party, she would not have informed to family members regarding the incident. It is a case where prosecutrix was all alone in the house and she has been over powered by the appellant as per her version, therefore, sign of struggle and injuries on her body are immaterial.

11. Looking to the entire oral and documentary evidence and medical evidence, argument advanced on behalf of the appellant is not sustainable. The case laws cited by learned counsel for the appellant are of no help as the same are clearly distinguishable from the facts of the present case. This court has no reason to record a contrary view what is recorded by the trial court and the act of the appellant falls within the mischief for which the trial court convicted and sentenced him and same is hereby affirmed.

12. 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 less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. 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 15-4-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju