

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 13-11-2019
 Judgment delivered on 06-12-2019

CRA No. 3315 of 1999

- Vijendra Kumar Kumhar s/o. Benshroop Kumhar, aged 30 years, resident of village Tarabakra, Police Station Kalhari, District Korea, MP (now CG).

---- Appellant.

Versus

- State of Madhya Pradesh (Now State of CG).

---- Respondent

 For Appellant : Mrs. Ranjana Singh Tomar,
 Advocate
 For respondent/State : Mr. Afroz Khan, 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 30-11-1999 passed by the Additional Sessions Judge, Manendragarh in Sessions Trial No. 152 of 1999 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.1,000/- with default stipulations.

2. As per prosecution case, on 30-12-1998 sometime in the afternoon the prosecutrix had gone towards forest to collect fire-wood, the appellant came from behind and after catching hold of her dropped her to ground and committed sexual intercourse with her without her consent and against her will. 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) In medical examination of prosecutrix, no injury was found on her person or on her private part and Doctor has not given any definite opinion regarding rape, therefore, finding of the trial court is not sustainable.
- ii When rape is committed in the open with such amount of force, injuries would definitely have been sustained by the prosecutrix, but no injury was found which shows that no offence was committed.
- lii) Prosecutrix has not informed PW/2 Shiv Prasad and PW/3 Ganga Ram regarding commission of rape which is unnatural and in fact casts shadow of doubt on the entire case.
- iv) It should have been held by the trial court

that prosecutrix was a consenting party and she lodged the report because PW/2 Shiv Prasad and PW/3 Ganga Ram have seen the incident, therefore, finding of the trial court is liable to be set aside.

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 she went to forest for collecting fire-wood and at the same time appellant caught hold her from back side and made her lay down on earth, removed her garments and committed sexual intercourse with her without her consent and against will. As per version of this witness, she narrated the story to her husband. Version of this witness is supported by version of PW/2 Shiv Prasad and PW/3 Gangaram who have reached to the spot and found the appellant in the company of the prosecutrix. Version of this witness is supported by version of this Dr. S.R. Parste (PW/4) who examined the prosecutrix and found lacerated wound on her left hand

which is caused within 24 hours of the examination. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Date of incident is 30-12-1998 and report was lodged on the same day at Police Station Kalhari naming the appellant as culprit and act of rape as per Ex.P/1. Prosecutrix is constant to her version right from day of the incident upto the date of her examination before the trial court.

7. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. 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 that all the persons who reached to the spot saw the appellant in the company of the prosecutrix. There is no delay in lodging the FIR, therefore, there is nothing on record to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Considering all the facts and circumstances of the case, this court is of the view that argument advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief of Section 376(1) of the IPC for

which the trial court convicted him. This court has no reason to take a contrary view what has been recorded by the trial court. Conviction of the appellant for the said offence is hereby affirmed.

8. 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.

9. 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 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 30-04-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju

