

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1207 of 1999

Reserved on : 05.12.2019

Delivered on : 20.12.2019

Gulab Ram, S/o Aghori Prasad, aged about 24 years, R/o Village- Dumarपालि (Dabhara), District- Janjgir-Champa (M.P.) (Now C.G.) ---- **Appellant**

Versus

The State of Madhya Pradesh (Now Chhattisgarh) through Station House Officer, Dabhara, District- Janjgir-Champa (C.G.) ---- **Respondent**

For Appellant : Mr. Sourabh Sharma, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, 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 23.04.1999 passed by Special Judge (Atrocities), Bilaspur (M.P.) (Now C.G.) in Special Criminal Case No. 287/1996, wherein the said court convicted the appellant for commission of offence under Sections 450 & 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 4 years and fine of Rs. 500/- and R.I. for 7 years and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, the appellant committed sexual intercourse with the prosecutrix by trespassing her house. The prosecutrix is a dumb girl. Due to act of the appellant, she conceived and when pregnancy reached to the advance stage, father of the prosecutrix decided to lodge the report and it is lodged as per Ex. P/1 on 16.03.1996 at Police Station- Dabhara. The matter was investigated, 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) The FIR was lodged after 7 months of the incident on 16.03.1996 and the delay is not explained, therefore, case of the prosecution is doubtful.

(ii) The prosecutrix (PW-1) did not answer the questions put to her during cross-examination, therefore, her version is not dependable.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, 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 proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. The prosecutrix (PW-1) deposed in her examination-in-chief that the appellant committed rape on her. Version of this witness is unrebutted during cross-examination. It is further supported by version of father of the prosecutrix-Nanku (PW-2) who reached at the time of incident on cries of the prosecutrix and saw that the prosecutrix was lying on surface without cloth and the appellant was sitting over her. On seeing this witness, the appellant flee away from the spot. Version of this witness is supported by version of Malti Bai (PW-3) who is mother of the prosecutrix to whom the incident was informed. It is further

supported by version of Dr. N.P. Mishra (PW-7) who examined the appellant and found him capable of intercourse.

7. Nanku (PW-2) is firm to his statement right from day of investigation and he stated in his earlier statement recorded under Section 161 of Cr.P.C. that the appellant committed rape on the prosecutrix. In the present case, though the prosecutrix has not answered some questions put to her by defence side, but the fact remains that her version is supported by eye-witness account to the incident namely Nanku (PW-2). From the evidence, it is clear that the prosecutrix is dumb and rape was committed after trespassing the house. Looking to the entire facts and circumstances of the case and further looking to the evidence of eye-witness, it cannot be said that it is a case of consent.
8. It is true that there is delay of 7 months in lodging the report in 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. In the present case, father decided to lodge the report when pregnancy of the prosecutrix reached to advance stage which shows that only after giving it a serious thought, he must have decided to lodge the FIR. When the victim is a dumb girl, she is dependent on her father and it is for her father to decide whether to lodge the report or not. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in 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, in 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. In view of the above, the argument advance on behalf of the appellant is not sustainable.

9. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and eye-witness account to the incident. The act of the appellant falls within mischief of Sections 450 & 376 (1) of IPC, 1860 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

10. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 30th April, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge