

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14-10-2019
 Delivered on 20-11-2019

CRA No. 1097 of 2001

- Harish @ Harish Chandra s/o. Hetram Satnami aged about 24 years, resident of Pipar para, Mungeli, Dist. Bilaspur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

 For Appellant : Mr. Sunil Sahu, Advocate.

For respondent/State : Mr. Ishwar Jaiswal, 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 12-09-2001 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (CG) in Sessions Trial No. 269 of 2000 wherein the said Court has convicted the appellant for commission of offence under Sections 376(1), of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. She is resident of Piparpara, Mungeli. On the date of incident i.e.,

4-7-2000 at about 9.00 pm she went to ease herself and at the same time appellant reached there, pressed her mouth, dragged her to place of cremation, made her lay down on the earth, removed her garments and committed sexual intercourse with her without her consent and against her will. Her mother reached to the spot for search of prosecutrix and after seeing her mother, 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) Prosecutrix deposed before the trial court (para 8 and 10) that she did not cry at the time of incident which shows her consent and therefore, charge under Section 376(1) of IPC is not established.
- ii Age of the prosecutrix is not proved to be below 18 years and she was consenting party, therefore, the trial court is not right in holding guilty to the appellant.
- iii) The trial court has not evaluated the

evidence in its true perspective, therefore, conviction of the appellant 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. The first question for consideration of this court is whether appellant committed sexual intercourse with prosecutrix without her consent and against her will. In the present case, date of incident is 4-7-2000 and report was lodged against the present appellant at Police Station Piparpara on the same day naming the appellant as culprit and act of rape is also mentioned in the said report. There is no delay in lodging the FIR.

7. Prosecutrix PW/1 deposed before the trial court that she had gone to ease herself where appellant reached, pressed her mouth, dragged her towards the place of cremation, he pressed her hand and leg, removed her

garments and also removed her pant and thereafter he committed sexual intercourse with her. As per version of this witness, she narrated the incident to her mother who reached on the spot and seeing her mother appellant fled away from the spot.

8. It is contended on behalf of the appellant that as per version of prosecutrix (para 8 and 10) she did not cry at the time of commission of alleged offence which shows her consent.

9. In view of this court, argument is without substance. If the prosecutrix would have been consenting party, she would not have informed to her parents regarding incident and would not have lodged report in Police Station on the same day. Informing about the incident to parents and lodging report on the same day shows that she was not a consenting party. Version of this witness is supported by version of Danial Masih (PW/2) who is father of the prosecutrix and Asant Lata (PW/3) who is mother of the prosecutrix. Both have supported the version of prosecutrix. Again, it is supported by version of Dr. Smt. Vibha Sindhoor who examined the prosecutrix and found one abrasion on her body measuring 1.5 cm x 0.5 cm and she firmly opined that prosecutrix has been subjected to sexual intercourse in near past. Prosecutrix was examined on next day of the incident

i.e., 5-7-2000 and looking to the evidence of medical expert it is clear that prosecutrix has been ravished. Again, version of direct evidence is supported by version of Dr. Jagdishwar Rai (PW/11) who examined the appellant and found him capable of intercourse. After considering the entire evidence as a whole, it cannot be inferred that prosecutrix was consenting party.

10. 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 prosecutrix is firm in informing about the incident and lodging the report, there is nothing on record to say that the appellant has been falsely roped with charge. There is no reason to disbelieve the evidence of prosecutrix and other witnesses.

11. Looking to the entire evidence, argument advanced on behalf of the appellant is not sustainable. After reassessing the evidence, this court has no reason to substitute contrary view and the act of the appellant falls within mischief for which the trial court convicted 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 cannot be termed as harsh or unreasonable or disproportionate. 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