

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 377 of 2010****Reserved on : 16.01.2019****Delivered on : 30.01.2019**

Shankar Lal Bhoi, S/o Makardhwaj Bhoi, aged about 39 years, R/o Village- Baitari, Police Station- Basna, District- Mahasamund (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through District Magistrate, Mahasamund District- Mahasamund (C.G.)

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.

For State/respondent : Mr. Raghvendra Verma, Govt. Adv.

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 03.06.2010 passed by Special Judge, [Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989], Mahasamund, District- Mahasamund (C.G.) in Special Session Trial No. 01/2010, 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 5 years and fine of Rs. 5000/- and R.I. for 10 years and fine of Rs. 5000/- respectively with further default stipulations. All the sentences to run concurrently.
2. In the present case, the prosecutrix is PW-1. As per version of the prosecution, on 24.05.2009 about 5-6 p.m., husband of

the prosecutrix went to village - Devalgarh to see Karma Dance Festival and inside the home, the prosecutrix remained along with her children and after taking meal, they were sleeping inside the home. At about 9 p.m., the prosecutrix heard some voice then she opened the eyes and saw that the appellant along with one other person namely Suraj Kewat forcibly took the prosecutrix at kitchen garden and when she raised some alarm, the co-accused shut her mouth, thereafter, the appellant and his companion removed cloth of the prosecutrix and appellant committed rape with the prosecutrix. At this juncture, brother-in-law (Jeth) of the prosecutrix reached on the spot and thereafter, the appellant ran away from the spot. Matter was reported next day. The 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) Version of the prosecutrix (PW-1) and Bhagwan Singh (PW-2) is not reliable because they have not stated substance of the prosecution case in their earlier statement recorded under Section 161 of Cr.P.C. They have not stated about co-accused Suraj Kewat, therefore, it is a case of false implication of the appellant.

(ii) Parikshit Pradhan (PW-3) has also not deposed against Suraj which is contradictory to his statement recorded under Section 161 of Cr.P.C., therefore, his statement is also not inspiring confidence.

(iii) Version of Dr. Mrs. Kiran (PW-6) who examined prosecutrix, is not supporting version of the prosecution, therefore, conviction of the appellant is not sustainable.

(iv) Seizure of article was of no help to the prosecution because the witnesses of seizure deposed different colour of article while in seizure memo, different colour of article is mentioned. Therefore, it appears that the prosecution has not put-forward the actual prosecution case.

(v) Finding of the trial court is contrary to the settled principle of law, therefore, conviction of the appellant 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. In the present case, date of incident is 24.09.2009 and report was lodged on 25.09.2009 i.e. on next day of the incident at police station- Basna. Place of incident is village- Baitari which is at distance of 18 km. from the police station. FIR contains name of the appellant and commission of rape by the appellant is also mentioned in the said FIR.
6. The prosecutrix (PW-1) deposed before the trial court that on the date of incident, she was sleeping in her house with her two small children. At the same time, the appellant entered

into her house and after pressing her mouth taken her to kitchen garden of the house and committed rape with her. She further deposed that her brother-in-law (Jeth) Bhagwan Singh (PW-2) reached there and found the appellant lying over the prosecutrix and looking to her brother-in-law (Jeth), flee away from the spot. She further deposed that undergarment and foot wear of the appellant left on the place of incident.

7. As per version of the prosecutrix (PW-1), she informed the incident to people of locality and Kotwar of the village and next day, she reported the matter as per Ex. P/1. Version of the prosecutrix (PW-1) is supported by version of Bhagwan Singh (PW-2) who is eyewitness account to the incident and as per version of this witness, when he heard sound from kitchen garden, reached there and by light of torch saw the appellant lying over the prosecutrix.
8. As per version of this witness, the appellant flee away, but he caught hold him where the appellant caught his neck and when he cried to his brother for help, the appellant flee away. Version of Bhagwan Singh (PW-2) is supported by version of Suklal (PW-8) & Diwal Singh (PW-11) who have seen that the appellant was pressing neck of Bhagwan Singh (PW-2). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence and their version is unshaken during cross-examination.

9. Dr. Ghanshyam Chandrakar (PW-9) examined the appellant and found him capable of intercourse. There is nothing on record to show that the appellant has been falsely implicated in the present case on account of any grudge.
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. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.
11. It is true that there is one day delay in lodging report. 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 delayed FIR. The delay in 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 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.

12. On overall assessment of the statement of prosecutrix, it is found to be trust worthy. There is nothing on record to say that the appellant has been falsely implicated. There is nothing to disbelieve evidence of prosecutrix and other supporting witnesses. There is no material contradiction and omission in the statement of the prosecutrix and other witnesses regarding commission of the offence.
13. True it is that name of one other person namely Suraj Kewat was mentioned in the FIR and statement recorded under Section 161 of Cr.P.C of material witnesses, but FIR and said statement is not substantive piece of evidence. Both can be used for contradicting the witnesses, but from the statement deposed before the trial court, version of the witnesses was not contradicted. Right of cross-examination of the witnesses before the trial court is always available to the defence side. After searching cross-examination, there is nothing to say that the appellant has been roped with false charge or different story is set-up to involve the appellant in the crime in question, therefore, not naming name of Suraj Kaiwarth by the witnesses before the trial court, was of no help to the present appellant. Arguments advanced on behalf of the appellant is not sustainable.

14. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the entire evidence, this Court has no reason to record contrary finding. House-trespass in order to commit offence is punishable with imprisonment for life under Section 450 of IPC and commission of rape by the appellant is offence punishable under Section 376(1) of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

15. The trial court awarded jail sentence of 10 years for commission of offence under Section 376(1) of IPC. Looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
16. As per direction of this Court, the appellant has been arrested on 31st December, 2018 and sent to jail for serving out the remaining part of the jail sentence, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge