NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 718 of 2011

- Bhikham s/o. Rai Singh Sahu, aged about 28 years, r/o. Village Purur, Police Station Gurur, District Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Gurur, District Durg (CG).

---- Respondent

For Appellant : Mr. Rajat Agarwal, Advocate

For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

3-1-2019

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-07-2011 passed by the Additional Sessions Judge, Balod, District Durg (CG) in Sessions Trial No. 42 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 376 (2)(f) read with Section 511 of the IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00/- with default stipulations.

2. In the present case, prosecutrix is PW/2. As per version of the prosecution, on the date of incident i.e., 19-2-2011 at about 6.00 p.m to 7.00 p.m., present appellant had taken the

prosecutrix who was aged about four years towards the field by alluring her to give biscuits and after removing her under-garments tried to commit sexual intercourse with her. 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) Version of prosecutrix is not supported by independent witnesses, hence her statement is not trustworthy.

ii As per medical evidence no abrasion was found on her body, therefore, medical evidence is also not supporting the case of prosecution.

iii) There are material contradictions, omissions and improvements in the version of prosecution and other witnesses. The trial Court overlooked the same and came to wrong conclusion, 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/2) deposed before the trial Court that the appellant took her for purchasing biscuits and he had taken her to a field near kitchen garden and thereafter removed her undergarments and laid down over her. Version of prosecutrix is supported by version of Rameshwari (PW/1), Godavari Bai (PW/3) and Prahlad (PW/5) to whom the incident was informed. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Again, version of direct evidence is supported by version of Dr. R.S. Bharadwaj (PW/8), who examined the appellant and found him capable of sexual intercourse. PW/12 Dr. Smt. Vrinda Suhasi Mangde examined the prosecutrix and opined that her age is about 4 years.

7. Looking to the entire evidence, the trial Court opined that it is case of attempt to rape against the present appellant. The incident took place on 19-2-2010 and report was lodged on the next day i.e., 20-2-2010 at Police Station Gurur.

8. 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.

9. It is true that there is delay of one day in lodging the report at 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. 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.

10. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses, therefore, argument advanced on behalf of the appellant is not sustainable. The trial Court has considered the evidence elaborately led before it and recorded the finding of conviction. This court has no reason to substitute the contrary finding.

11. Attempt to rape is an offence under Section 376 (2) (f) read with Section 511 of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

12. Heard on the point of sentence.

The trial Court awarded RI for ten years looking to attempt of rape of a girl aged about four years, 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. As per report of the jail authorities, the appellant has suffered jail term and he has been released from jail after remission, therefore, no further

order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju