

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 05-12-2019

Delivered on 13-12-2019

CRA No. 501 of 2003

- Safique Ahmad, aged about 35 years s/o. Inayat Miyam, r/o. Village Dubhbal, Police Station Ranka, Dist. Gadwa (Jharkhand). At present village Sarima, Police Station Shankargarh, District Sarguja (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Shankargarh, District. Sarguja (CG).

---- Respondent

 For Appellant : Mr. D.N. Prajapati and
 Mr. Gajendra Sahu, Advocates

For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 9-4-2003 passed by 5th Additional Sessions Judge (FTC), Ambikapur, District Sarguja (CG) in Sessions Trial No. 179 of 2002 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.500/- with default stipulations.

2. As per prosecution case, on 16-2-2002 prosecutrix (PW/5) went to village Sarima to attend the marriage function of Imtiyaz Khan. After taking lunch at about 2 – 3 pm., when she was returning to her house, on the way appellant caught her hand, took her into the field of Laxman Ram and committed rape on 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) Age of the prosecutrix is found to be more than 16 years i.e., 18 years and there was consent of the prosecutrix, therefore, offence under Section 376(1) of the IPC is not made out.
- ii) There is no external or internal injuries on the body of the prosecutrix, therefore, charge is not established.
- iii) As per version of prosecutrix, brother of the

prosecutrix has seen the incident and he has not been examined, therefore, trial court should have recorded finding of acquittal.

- iv) The incident took place at about 2 – 3 pm., in the open place which shows the conduct of the prosecutrix, therefore, finding of the trial court is liable to be set aside.
- v) In support of his arguments, he placed reliance on the decision of Hon'ble Supreme Court in the matter of **State of MP vs. Munna @ Shambhoo Nath, reported in 2016(1) SCC 696** wherein it is held that if prosecutrix is more than 16 years and in case of consensual intercourse, charge under Section 376(1) of IPC is not established.

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. In the present case, prosecutrix is PW/5. She deposed before the trial court that she had gone to village Sarima to attend the marriage of one Imitiyaz Khan and when she was returning to her home at about 3.00 pm., appellant met her in the mid-way, caught hold her hand, dragged her, When she cried, he pressed her mouth and took her to the field where he made her lay down, removed her Salwar and also removed his full pant and thereafter committed sexual intercourse with her without her consent. This witness has been subjected to incisive and searching cross examination but facts unrebutted. In the present case, date of incident is 16-2-2002 and report was lodged at Police Station Shankergarh on the same day as per Ex.P/3. There is no delay in lodging the FIR. There is no infirmity in the statement of prosecutrix. Version of prosecutrix is supported by version of Kuthbuddin (PW/3) before whom appellant confessed his guilt. It is further supported by version of Abdul (PW/4), Mohd. Yunus (PW/6) and Jamila Khathoon (PW/8). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Version of all these witnesses is further supported by

version of Dr. Lakda (PW/9) who examined the appellant and found him capable of intercourse. Again, it is supported by version of PW/12 Dr. Smt. J.P. Kujoor who examined the prosecutrix on 18-2-2002 and found the following injuries on her body.

- I) 1 cm long present, extended horizontally, over dorsal surface of first phalanx of index finger on left side of palm with two abrasion size of 0.2 cm present near it.
- ii) Two minimum numbers (1) 3 cm long (2) 2 1/2 cm long part 1/2 cm apart on left side of cheek at 2 cm lateral to angle to lip extended obliquely.
- lii) Two in number (1) 1 1/2 cm x 1/2 cm (2) 3/4 x 1/2 cm situated in front of tragus of ear on left side situated 1/2 cm apart from each extended horizontally. All abrasions are brown black in colour. All injuries caused by rough object.

7. Looking to the entire evidence, the trial court opined that it is not a case of consensual intercourse. After re-assessing the entire evidence this court has no reason to

take a contrary view what is recorded by the trial court. 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 her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence against the appellant and there is nothing to say that the appellant has been roped with false charge, therefore, it is not a case where argument advanced on behalf of the appellant regarding consensual intercourse is acceptable. There is no reason to disbelieve the version of prosecution witnesses. Considering all the facts and circumstances of the case, argument advanced on behalf of the appellant that it is a case of consensual intercourse is not acceptable and the case law cited by learned counsel for the appellant is of no help as the same is clearly distinguishable from the facts of the present case.

8. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellant falls within mischief of

Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

9 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.

10. 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