

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 18-11-2019

Delivered on 17-12-2019

CRA No. 838 of 2001

- Sukalu s/o. Pandeyram aged about 28 years, occupation Mistri, village Tiwaragudi, Police Station Ramanujnagar, Dist. Surguja (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Patna, District Korla (CG).

---- Respondent

 For Appellant : Mr. Nasimuddin Ansari, Advocate
 For respondent/State : Mr. Raghavendra Verma, GA.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 21-8-2001 passed by First Additional Sessions Judge, Baikunthpur (Koria), CG in Sessions Trial No. 210 of 2001 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.

2. In the present case, prosecutrix is PW/6. As per version of prosecution, prosecutrix was working as a labourer in construction work of Girls School where appellant was Mission. In the after

noon when two other female labourers left the place, appellant came into room of the prosecutrix, caught hold her, removed her garments and also removed his full pant and thereafter committed sexual intercourse with her without her consent and against her will and he did not heed to the objection raised by the prosecutrix. Prosecutrix was in fear and she informed about the incident after one day to her husband because she was not willing that any violence will take place between her husband and the appellant. The matter was reported at Police Station Patna after seven days as per Ex.P/9. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) There was delay of seven days in lodging the FIR and prosecution has not explained the delay, therefore, case of the prosecution is doubtful.
- ii Dr. Kalawati Patel (PW/10) who examined the prosecutrix did not give definite opinion regarding intercourse. She did not find any injury on the body of the prosecutrix which shows that no offence was committed.
- iii) The story of prosecution is not proved beyond shadow of doubt, therefore, finding

arrived at by 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/6) deposed before the trial court that she was working as labourer in the construction work of Girls school where appellant was massion. On the date of incident two other female labourers left the place and thereafter appellant came into the room, caught hold her, removed her garments even after her objection and also removed his garments and thereafter committed sexual intercourse with her without her consent and against her will. As per version of this witness, she informed about the incident after one day to her husband and she was suppressing the incident so that any scuffle may not take place between her husband and the appellant. From the evidence of prosecutrix, it is clear that the appellant committed sexual intercourse with her against her will and she is firm that if she would have a consenting party, she would not have lodged the

report. Version of prosecutrix is unrebutted during cross examination. It is supported by version of her husband Balram (PW/8) to whom story was narrated by the prosecutrix. It is further supported by version of Dr. A.K.S. Sharma (PW/1) who examined the appellant and found him capable of intercourse. Version of these witnesses is subjected to searching cross examination but nothing could be elicited in favour of defence. True it is that no injury was found on the body of the prosecutrix or on the body of the appellant, but the fact remains that it is not a case of assault by any instrument but it is a case of sexual assault in which sustaining of injury by either side is not compulsory. It depends upon the situation prevailing and area of commission of crime. The case of the prosecution cannot be thrown out merely because no injury was found on the body of either side.

7. Looking to the statement of the prosecutrix, it cannot be said that she has falsely implicated the appellant. 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.

8. It is true that there is delay of seven days in lodging the report at Police Station. Prosecutrix is a married woman, she was fearful as per statement after the incident to her husband. After support of husband prosecutrix and her husband lodged the report after seven days of the incident. 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 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.

9. 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 witness. The evidence adduced by the prosecution is satisfactory

to bring home the guilt of the appellant. In view of the above, argument advanced on behalf of the appellant is not sustainable.

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 the IPC, 1860 for which the trial Court has convicted the appellant and same is hereby affirmed.

10 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.

11. 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 30-4-2020.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju