

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 548 of 2011**

- Ishwer s/o Mhan aged about 30 years, occupation Bidi Majdoor, r/o., Bazarpara Charama, Thana Charama, District Kanker (CG).

---- Appellant

Versus

- State of Chhattisgarh through the District Magistrate, North Bastar, Kanker, District Kanker (CG).

---- Respondent

 For Appellant : Mr. Sunil Sahu, Advocate
 For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****4-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-05-2011 passed by the Sessions Judge, Kanker, District North Bastar, Kanker (CG) in Sessions Trial No.06 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 376 read with Section 511 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/2. As per version of the prosecution, prosecutrix resides at Bazarpara Charama with her parents and on 28-10-2010 appellant called the prosecutrix and her friend namely Ku. Rukmani for packing the Rangoli and thereafter he gave assurance to provide fruits and after caught hold the prosecutrix removed her clothes and tried to commit intercourse with her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. The appeal is preferred on the following grounds.

- i) From the statement of the prosecutrix offence of attempt to rape is not made out and even if the statement is accepted as it is, then offence under Section 354 IPC is made out.
- ii Dr. Smt. Deepti (PW/7) has not given any report regarding rape or attempt to rape who examined the prosecutrix on the same day.
- iii) Version of prosecution is not believable and other witnesses are hearsay in nature, therefore, finding arrived at by the trial Court is not sustainable.
- iv) There is enmity between the parties and

due to that reason the appellant has been falsely implicated, therefore, finding of the trial Court is liable to be reversed.

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 allured her for giving fruits and thereafter took her to his room, undressed her and made her laid down on surface and committed bad work with her. She further deposed that she sustained pain in her private part and she informed the incident to her parents and her other near and dears. Version of this witness is supported by version of PW/1 Rajesh Kumar who is father of the victim. Smt. Sushma Jha (PW/3) and Smt. Lalita (PW/6). All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of this witness is supported by Dr. Smt. Deepti Goutam (PW/4) whom examined the victim and found reddishness and pain on

private part of the prosecutrix. Again, it is supported by Dr. O.P. Shankhwar (PW/8) who examined the appellant and found him capable of intercourse. In the present case, date of incident is 28-10-2010 and report was lodged on the same day naming the appellant as culprit and his act of commission of attempt to rape is also mentioned in the said report.

7. 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.

8. There is no delay 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.

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 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.

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

11. Heard on the point of sentence.

The trial Court awarded RI for seven years looking to attempt of rape, which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

12. 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