

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 8-11-2019
Delivered on 6-12-2019

CRA No. 605 of 2001

- Rameshwar s/o. Damodar Mahra, age 25 years, r/o. Maadpal Indira Aavas, P.S., Nagarnar, District Bastar (CG).

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

For Appellant : Mr. P.K. Tulsyan, Advocate
For respondent/State : Mrs. Smita Jha, Panel Lawyer

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 23-6-2001 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") Bastar, Jagdalpur, CG in Sessions Trial No. 470 of 2000 wherein the said Court has convicted the appellant for commission of offence under Sections 376 (1), 506 Part II, 323 of IPC and Section 3 (1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo rigorous imprisonment for 7

years and fine of Rs.1000/-, RI for one year and fine of Rs.200/-, RI for three months RI for one year and fine of Rs.1,000/- respectively with default stipulations.

2. In the present case, prosecutrix is PW/1. Date of incident is 5-9-2000 at Chachra Pakna forest. It is alleged that on 6-9-2000 at about 10.30 pm in the night prosecutrix after taking her meals went along with her girl friend Shanti to see Lord Ganesh pandal and while she was coming back to her parental home with two persons namely Tensingh and Lakhan, appellant met near the house of one Mannu Mohra and asked Tensingh and Lakhan to go away. On their refusal he beat them and got them to run away. Prosecutrix tried to cry but her mouth was covered with cloth by the appellant and threatened to kill her if she will cry, thereafter appellant took her to a place namely Chachra Pakna forest and committed sexual intercourse with her without her consent and against her will knowingly that she belongs to a member of Scheduled Tribe. 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) As per version of prosecutrix, her birth year is 1984 and there is variation of three years

of the age ascertained through X-ray, therefore, she was not minor on the date of incident.

- ii The story put-forth by the prosecution witnesses is unnatural and cooked up which creates doubt on prosecution case.
- lii) FIR was lodged after two days and no explanation was given for delayed FIR, therefore, finding of the trial court is not liable to be sustained.
- iv) There is enmity between appellant and parents of the prosecutrix but the trial court ignored the same. Prosecutrix deposed that she got fell down on floor but she sustained no injury which creates doubt on version of prosecution.
- v) After the incident prosecutrix went to the house of her friend while her own house was on way to the house of her friend, therefore, conduct of the prosecutrix is unnatural.
- vi) After the incident prosecutrix and her friend did not inform the incident to her family members and other authorities, therefore, finding of the trial court is not liable to be sustained.

- vii) Dr (Smt) A. Chandra Rao (PW/6) who examined the prosecutrix is not supporting the version of prosecution, therefore, judgment of conviction 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 same is not liable to be interfered while invoking 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. As per version of prosecutrix (PW/1) she went to see Lord Ganesh Pandal with her friends namely Shanti and Pinki who left her in the place of function of Lord Ganesh and while she was returning with Tensingh and Lakhan, appellant met them on the way. He assaulted Tensingh and Lakhan and got them to run away, thereafter he took her to Chachra Pakna forest and made her lay down on the earth, removed her undergarments and committed sexual intercourse with her without her consent. Version of this witness is unrebutted during cross examination. Her version is supported by Lakhan (PW/2) and Tensingh (PW/3). Again, it is supported

by version of Smt. Kanak Bai (PW/4) who is mother of the prosecutrix, Smt. Panchami Bai (PW/5) who is sister-in-law of the prosecutrix. Again it is supported by Dr. Vinay Kumar (PW/8) who examined the appellant and found him capable of intercourse.

7. True it is that no injury was found on the body of the prosecutrix and she did not lodge report on the same day, but that itself is not sufficient to discard her version. There is no material contradiction and omission in the statement of the prosecutrix and other witnesses. All the witnesses have deposed in one voice that it is the appellant who first assaulted two persons accompanied with prosecutrix and thereafter committed rape on her. In the present case no material contradiction is established.

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. When her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence that she was returning with two persons who have been cited as witnesses before the trial court and they have supported

the version of prosecutrix. daughter of the prosecutrix reached to the spot while process was going on and again husband of the prosecutrix also reached to the spot and found the appellant in the company of the prosecutrix.

9. It is true that there is delay of two days in lodging the report at Police Station, but same is not sufficient to throw overboard the evidence of prosecution witnesses. 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, therefore, argument on this count is not sustainable. Even if she did not directly return to the house of her parents, the same is not sufficient to throw overboard the version of prosecutrix.

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. Considering all the facts and circumstances of the case, this court is of the view that argument advanced on behalf of the appellant is not sustainable. There is no reason to take a contrary view that is recorded by the trial court. Offence of rape under Section 376(1) of IPC is established for which the trial Court convicted and sentenced the appellant and same is hereby affirmed.

11. Appellant has also been convicted for offence under Section 506 Part II of IPC. PW/1 deposed that the appellant threatened her to assault by knife but this version is not mentioned in FIR and there is no explanation for not mentioning the same in FIR. There is no evidence that appellant was in possession of knife, therefore, it is not a case where the appellant was determined to execute his threat on the spot. For commission of offence under Section 506 Part II of IPC, it has to be established that person threatening was determined to execute his threat on the spot, but that is not the case here. In absence of substantive evidence, any word utter by the appellant regarding threat is mere fury which has only sound but has no substance, therefore, charge under Section 506 Part II of IPC is not established.

12. The appellant has also been convicted under Section 323 of IPC for causing voluntarily injury to Lakhan and Tensingh, but there is no medical evidence that these two persons really sustained injuries on their bodies. In absence of medical evidence, it is difficult to hold tht these two persons really sustained injuries which were caused by the appellant, therefore, charge under Section 323 of IPC is also not established.

13. The appellant has also been convicted under Section 3 (1)(xii) of the Act, 1989. Section 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 may be read as under:

“Section 3(1) (xii) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed”.

14. In the present case, there is nothing on record that prosecutrix agreed for sexual intercourse, therefore, it is not a case of exploring the prosecutrix for sexual intercourse, but

from the evidence it is a clear case of rape for which prosecutrix did not consent and same is committed against her will, therefore, offence under Section 3 (1)(xii) of the Act 1989 is also not established.

15. Accordingly, the appellant is acquitted of the charges under Section 506 Part II, 323 of IPC and Section 3 (1)(xii) of the Act, 1989. The appellant is convicted under Section 376(1) of IPC. The trial court awarded sentence of seven years and fine of Rs.1000/- with default stipulations. Corporal punishment by the trial court is minimum which is required under law and less than minimum cannot be awarded. Sentence of seven years and fine of Rs.1000/- for the said offence is hereby upheld.

16. Accordingly, the appeal is partly allowed. The appellant is reported to be on bail. His bail bonds shall 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