

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 254 of 2012**

- Hariram s/o. Gangaram Nishad aged about 25 years, r/o. Vuillage Tora, Police Station Simga, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Simga, District Raipur (CG).

---- Respondent

 For Appellant : Mr. Palash Tiwari Advocate
 appears as Amicus Curiae

For respondent/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****7-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-2-2012 passed by the Additional Sessions Judge, Bhatapara, District Raipur (CG) in Sessions Trial No. 26 of 2010 wherein the said Court has convicted the appellant for commission of offence under Sections 376 (1) and 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.100/- and RI for three months and to pay fine of Rs.100/- with default stipulations.

2. In the present case, prosecutrix is PW/3. As per version of the prosecution, on 30-5-2010 at about 2.30 p.m., she had gone to answer the call of nature towards canal and at the same time the appellant taking benefit of her loneliness made her laid down on the earth and committed forcible intercourse with her. When she objected and tried to rescue alarm, appellant threatened her to kill. After the incident she informed the same to her husband, in-laws and other people of the locality. 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) Appellant has been falsely implicated on account of village politics and uncle of the prosecutrix was defeated in election by Ganga Prasad who is uncle of the appellant, that is why he has been charged falsely.
- ii) Prosecutrix changed her version in her court statement as well as the statement made before the Investigating Officer. She deposed before the court that she had sustained injury on her body but this version is not supported by the medical expert.
- iii) The trial Court overlooked the statement of defence witnesses and material

contradictions in the statement of the prosecution witnesses, 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/3) deposed before the trial Court that she had gone to ease herself at about 2.30 p.m., near the place of grazing cattle and at the same time, appellant dragged her towards canal and committed rape on her. She further deposed that when she cried, the appellant tied her mouth by towel. Version of this witness is supported by version of Devkaran (PW/1), who is husband of the prosecutrix, Gaukaran (PW/2), Bhagaiya Bai (PW/4) and Dhukharam (PW/5). All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

7. Head Constable Devchand (DW/1) deposed regarding injury on the head of the appellant, but the same is not relevant for just decision of the case because 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.

8. In the present case, report is lodged on the same day and it cannot be said that the appellant has been falsely implicated because relative of the prosecutrix has previously assaulted him. Version of this witness is supported by Dr. P.L. Chandan (PW/9) who examined the appellant and

found him capable of intercourse. In the present case, date of incident is 30-5-2010 and report was lodged on the same day naming the appellant as culprit and his act of rape and threatening is also mentioned in the said report.

9. 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.

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. The act of the appellant falls within mischief 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 ten years looking to commission 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