

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11-03-2019

Delivered on 28-03-2019

CRA No. 263 of 2009

- Kutumbhdas s/o Motidas, aged about 60 years, r/o. Village Hathleva Police Station Kawardha, Dist. Kabirdham (CG).

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Kawardha, Distt.- Kabirdham CG

---- Respondent

 For Appellant : Mr. Rahil Kochar, Advocate

For respondent/State : Mr. V.B. Singh, 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 24-3-2009 passed by the Sessions Judge, Kabirdam, Dist Kawardha in Sessions Trial No. 23 of 2008 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 seven years and to pay fine of Rs.500/- and RI for six months, with default

stipulations. Both the sentences are directed to run concurrently.

2. In the present case, victim is PW/6. As per version of prosecution on the date of incident i.e., on 30-12-2007 at about 10.00 pm at village Hathleva both victim and her husband were looking after the paddy which was kept in their barn. Her husband left the place to home for taking meals and at the same time appellant entered there, caught hold the prosecutrix, threatened her to kill, pressed her mouth and thereafter committed forceful rape on her. When her husband returned to barn, prosecutrix informed him about the incident and on the next day report was lodged at Police Station Kawardha. 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 is no positive and legal evidence to establish that the accused committed rape on prosecutrix.
- ii Prosecution failed to prove necessary ingredients of the offence because statement of all the witnesses are full of contradictions, omissions and improvements.

- iii) Solitary testimony of the prosecutrix (PW/6) as well as other interested witnesses namely Agan Sahu (PW/7), Ramjash (PW/3) and Ramjee (PW/4) could not be relied upon.
- iv) Medical report is not corroborating the version of the prosecutrix about rape.
- v) Report was lodged on the next day, but no explanation was given for delay caused in lodging the report, therefore, case of the prosecution is suspicious and finding of the trial court is liable to be set aside.

Reliance has been placed on the decision of Hon'ble the Supreme court in the matter of **Bhaiyamiyan @Jardar Khan and another vs. State of MP, 2011 SAR (Criminal) 625 SC, State of Rajasthan vs. Babu Meena, 2013 SAR (Criminal) 411 SC, Manoharlal vs. State of MP, 2015 SAR (Criminal) 274 SC, Hem Raj vs. State of Haryana, 2014 SAR (Criminal) 247 SC and Narendra Kumar vs. State (NCT of Delhi), 2012 SAR (Criminal) 511 SC.**

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 keeping paddy in her barn on the date of incident at about 10.00 pm and her husband left the place for taking meals and she was all alone at the time of incident. She deposed that appellant entered there, thrashed her, undressed her, thereafter undressed himself and committed rape on her. She further deposed that at the time of commission of rape, appellant pressed her mouth and threatened her to kill. She further deposed that after commission of offence, appellant fled away from the spot. As per version of this witness, she was weeping after incident and at the same time her husband reached there and asked about her weeping. She narrated the entire story to him. Thereafter, report was lodged at Police Station. Version of this witness is supported by version of Aghan Sahu (PW/7) who is husband of the prosecutrix, Ramjash (PW/3) and Ramjee (PW/4) to whom incident was informed. All the witnesses have been subjected to searching cross-examination but they remained unshaken. There is nothing to

say that these witnesses have deposed against this appellant on account of any grudge.

7. The incident took place on 30-12-2007 and report was lodged on 31-12-2007 i.e., ., on the next day at Police Station Kawardha as per Ex.P/5. In the FIR itself it is mentioned that due to night no means were available to reach Police Station which is at distance of 20 kms from the place of village Hathleva, therefore, report was lodged on next day. It is not a case that any material contradiction surfaces during cross examination about the incident. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution. Version of direct evidence is supported by medical evidence of Dr. Prabhat Chandra Prabhakar (PW/2) who examined the appellant and found him capable of intercourse. Therefore, argument advanced on behalf of the appellant is not sustainable looking to the entire evidence.

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. Evidence of the prosecutrix

to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary,

9. It is true that there is delay of one day 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.

10. Defence side examined Smt. Shanti Bai (DW/1) and Munna Lal (DW/2) but their version is not rebutting the evidence adduced by the prosecution regarding incident.

11. 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. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay. In the present case, the incident took place at night and no means were available at night to reach Police station for lodging the report, that is why there is delay of one day in lodging the report and same is properly explained. Therefore, delay has no adverse affect in the facts and circumstances of the case.

12. Considering all the facts and circumstances of the case, this court is of the view that the case laws cited by learned counsel for the appellant do not help to him as the same are clearly distinguishable from the facts of the present case.

13. The trial Court has evaluated the evidence elaborately and came to conclusion that it is the appellant who committed rape on prosecutrix and threatened her to kill. Finding of the trial-court is based on proper marshaling of the evidence and same is not based on any irrelevant or extraneous material, therefore, finding of the trial Court is not liable to be interfered with and this court has no reason to substitute the contrary finding. The act of the appellant falls

within mischief under Section 376(1) and 506 Part II of the IPC for which the trial court convicted the appellant and same is hereby affirmed. Sentence awarded by the trial Court cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. 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 28-6-2019.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju