

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 601 of 2012**

- Rewaram S/o Brijmohan Sahu, aged about 22 years, Occupation - Labour, R/o Village Jhanki, P.S. Nawagarh, Distt. - Durg C.G.

---- Appellant

Versus

- State of Chhattisgarh Through P.S. Nawagarh, Distt. Durg C.G.

---- Respondent

 For Appellant : Mrs Meera Jaiswal, Advocate

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 5-1-2011 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Durg (CG) in Sessions Trial No. 46 of 2009 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 and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per version of the prosecution, on 12-7-2009 at about 9.30 a.m., prosecutrix had gone towards field to ease herself lonely and at the same time appellant came from back and put the prosecutrix on the earth and on hearing cries closed her mouth, pressed her throat and committed forcible 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) There is no eye-witness account to the incident and other witnesses are relatives of the prosecutrix, therefore, their version is not reliable.
- ii Version of the prosecutrix is not corroborated by the medical evidence to record conviction of the appellant.
- iii) There is material contradiction 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/1) deposed before the trial Court that on the date of incident she had gone to ease herself towards field lonely and at the same time appellant came from back, caught her hand, made her laid down on the earth, pressed her mouth and neck, removed her undergarments and undressed himself and thereafter committed forcible intercourse with her. Version of this witness is supported by Dilip Banjare (PW/2) and Anju Bai (PW/3). All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. . Again, it is supported by Dr. M. Devdhar (PW/8) who examined the appellant and found him capable of intercourse. In the present case, date of incident is 12-7-2009 and report was lodged on the next day i.e., 13-7-2009 naming the appellant as culprit and his act of commission of 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 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.

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. The act of the appellant falls within mischief 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 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.

11. 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

