

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 893 of 2012****Reserved on : 05.02.2019****Delivered on : 28.03.2019**

Pitambar Sahu, S/o Ramchandra Dhangar, aged about 26 years,
R/o Village- Gourbhatha, Police Station- Arang, District- Raipur
(C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through: Station House Officer, Police
Station : Arang, District- Raipur (C.G.)

---- Respondent

For Appellant : Mr. Y.C. Sharma, Advocate.

For State/respondent : Mr. Vijay Bahadur Singh, PL.

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

1. Mr. Pushkar Sinha, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Y.C. Sharma, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 20.09.2012 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (amended 2015), Raipur (C.G.) in Special Session Trial No. 31/2012, wherein the said court convicted the appellant for commission of

offence under Section 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 2000/- with further default stipulations.

3. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 09.01.2012 at about 5:00 p.m., the prosecutrix with her friend namely Pushpa Koshaley went to call for nature where the appellant with his friend Omkeshwar were hidden. The appellant caught the prosecutrix and taken her to an old house in the village and at night forcibly committed rape on her and kept her whole night there and released the prosecutrix at morning. The matter was reported, the appellant was charge-sheeted and convicted as mentioned above.
4. Learned counsel for the appellant submits as under:-
 - (i) Evidence of the prosecutrix is not reliable, it may be a case of consent because report was lodged in doubtful manner.
 - (ii) The proof regarding age of the prosecutrix is also not sufficient, therefore, it cannot be said that she was minor on the date of incident.
 - (iii) The medical evidence is not corroborative piece of evidence because no internal or external injury was found on body of the prosecutrix, therefore, finding arrived at by the trial court is liable to be reversed.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant

material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. The prosecutrix (PW-1) deposed before the trial court that the appellant caught her when she was returning with her friend namely Pushpa Koshaley and taken her to an old house where the appellant removed her garments and committed rape on her. Version of this witness is supported by version of Dineshwar @ Dinesh (PW-2), Pushpa Koshaley (PW-3) & Heeralal (PW-4). These witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence and they are firmed to their version.
7. The statement of the prosecutrix is quite natural, inspires confidence and merit 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. In the present case, date of incident is 09.01.2012 and report was lodged on next day i.e. on 10.01.2012. There is no delay in lodging the report. 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. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge 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. No evidence is adduced by defence side, therefore, their version is not acceptable in absence of evidence.

9. There is nothing on record to say that the appellant has been roped with false charge. There is also nothing on record to say that the prosecutrix and other witnesses have deposed against the appellant due to any grudge or otherwise, therefore, their version is reliable and can be very well acted upon.
10. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the entire evidence, this Court has no reason to record contrary finding. Commission of rape by the appellant is offence punishable under Section 376 (1) of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence

11. The trial court awarded jail sentence of 7 years for commission of offence under Section 376 (1) of IPC. Looking to the gravity of offence, it cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
12. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge