

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 363 of 2010****Reserved on : 18.01.2019****Delivered on : 30.01.2019**

Budharu Sahu, S/o Kesha Sahu, aged about 60 years, R/o Village-Nari, P.S. Kurud, District- Dhamtari (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through P.S. Kurud, District- Dhamtari (C.G.)

---- Respondent

For Appellant : Mr. R.S. Patel, Advocates.

For State/respondent : Mr. V.B. Singh, Panel Lawyer.

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 06.05.2010 passed by Sessions Judge, Dhamtari (C.G.) in Session Trial No. 07/2010, wherein the said court convicted the appellant for commission of offence under Sections 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 8 years and fine of Rs. 5000/- with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, the appellant committed rape on prosecutrix for more than one occasion due to which she conceived. It is further case of the prosecution that the prosecutrix is mentally weak that is why she is unmarried. When she informed about the incident to her mother, a social meeting was called in the

village and thereafter matter was reported to police authorities. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The appellant has already taken the family planning scheme on 14.07.1976. The appellant has also filed the document as Ex.D/2, therefore, pregnancy on part of the appellant is not possible.

(ii) The trial court has not considered contradictory statement of the prosecution witnesses. The medical evidence against the appellant is not corroborating, therefore, finding arrived at by the trial court is not sustainable.

(iii) There is delay in lodging the report which caused doubt on case of the prosecution.

(iv) The trial court has not considered statement of Rajesh (DW-1) & Budharu Sahu (DW-3), therefore, finding arrived at by the trial court is liable to be reversed.

4. 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.

5. The prosecutrix (PW-1) deposed before the trial court that the appellant pressed her neck, made her lie-down in surface,

removed her undergarment and committed forcibly intercourse with her due to which she conceived and when about vomiting was asked by her mother, then she informed about the incident. Version of the prosecutrix is supported by version of Narendra Kumar Sahu (PW-2) & Johan Ram (PW-3) to whom the incident was informed and thereafter, one social meeting was convened.

6. From statement of all the witnesses, it is clearly established that the prosecutrix is mentally weak that is why she is unmarried and from the evidence of all the witnesses, there is no scope to say that it is a case of consent. Dr. Vijay Fulmali (PW-7) who examined the appellant and found him capable for intercourse.
7. True it is that there is delay in lodging the FIR but the fact remains that in the present case, the prosecutrix is mentally weak and the incident surpasses only when she conceived and informed about the incident to her parents.
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 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. Precisely this appears to be the reasons for delayed FIR. The delay in 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 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.
10. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the entire evidence, there is nothing on record to say the appellant has been falsely implicated and there is nothing to disbelieve evidence of prosecutrix and other supporting witnesses and 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 8 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 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. The appellant is reported to be on bail and his bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 15th April, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge