

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 739 of 2010**

- Gajanand Kurre S/o Ramkumar Kurre aged about 22 years, R/o village Chamari, Police Station Mungeli, District Bilaspur (CG).

---- Appellant.

Versus

- State of Chhattisgarh through the Police Station Mungeli, District Bilaspur (CG).

---- Respondent

 For Appellant : Mr. T.K. Tiwari, Advocate
 For respondent/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****2-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-09-2010 passed by the 2nd Additional Sessions Judge (FTC), Mungeli, District Bilaspur (CG) in Sessions Trial No. 39 of 2009 wherein the said Court has convicted the appellant for commission of offence under Sections 450 & 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/- on each count with default stipulations.

2. In the present case, prosecutrix is PW/5. As per version of the prosecution, on the date of incident i.e., 25-6-2009

when the prosecutrix was inside the house along with her two younger brothers, the appellant entered into the house and after sending the brothers of the prosecutrix out of the house undressed the prosecutrix and committed sexual intercourse with her forcefully. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Prosecution has failed to prove the age of the prosecutrix and report has been lodged only when the prosecutrix and the appellant had been seen by her mother, therefore, it may be a case of consent.
- ii) The story made by the prosecution does not appear to be correct because time and place of incident and other circumstances cannot be accepted for the commission of the said crime.
- lii) The trial Court has overlooked the material contradictions and omissions, therefore, finding of the trial Court is liable to be set aside.

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/5) deposed before the trial Court that on the date of incident she was in her house along with her two younger brothers namely Ajay and Sanjay to whom the appellant sent out of the house and thereafter undressed her and committed intercourse with her forcefully. Version of this witness is supported by version of PW/6 Dhan Bai and PW/7 Narottam Das to whom the story was narrated by the prosecutrix. Again, version of direct evidence is supported by version of medical evidence. As per version of Dr. B.L. Raj (PW/3), he examined the appellant and found him to be capable to perform sexual intercourse. PW/4 Dr. Smt. Pramila Das examined the prosecutrix on 27-6-2009 at Community Health Centre Lormi and noticed abrasion measuring 1 x 1/2 cm in her left ear and abrasion measuring 1/2 x 1/2 cm on her left elbow. As per version of this medical expert, both injuries were caused by hard and blunt object. She further opined that there was reddish in the private part of the prosecutrix and there is every possibility of intercourse

with her. Two slides were prepared from vaginal swab of prosecutrix and same was sent for examination to FSL and as per report of FSL, spermatozoa was found in the said slide. All the evidence goes to show that prosecutrix has been subjected to forceful intercourse as stated by her. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Evidence of medical expert is unshaken and there is no other medical evidence which is contrary to the opinion of the said medical expert. Again, there is no material contradictions in the statement of any of the prosecution witnesses. 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.

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. It is true that there is delay of two days in lodging the report at Police Station. Date of incident is 25-6-2009 whereas report is lodged at Police Station Mungeli on 27-6-2009. 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.

10 House-trespass in order to commit offence which is punishable with imprisonment for life is an offence under Section 450 of IPC and rape is punishable under Section 376(1) of IPC 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 seven years for offence of rape under Section 376 (1) of IPC and RI for seven years for offence of house-trespass under Section 450 of IPC 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 full jail term and he has been released from jail after completion of his full jail term, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju

