

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-01-2019
Judgment delivered on 07-02-2019

CRA No. 775 of 2010

- Narendra Kumar s/o. Shri Motilal Gupta, aged about 234 years, r/o. Bada Bazaar Chirmiri, PS Chirmiri, District Koriya (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Korba, District Korba (CG).

---- Respondent

&

CRA No. 795 of 2010

- Sonu Kumar @ Munna, aged about 29 years, s/o. Murari Lal r/o. Chirmiri, P.S. Chirmiri, district Korea (CG).

--- Appellant

Versus

- The State of Chhattisgarh through the District Magistrate Korba, District Korba (CG).

--- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.
In CRA No.775/2010

For Appellant : Mr. T.K. Tiwari, Advocate.
In CRA No. 795/2010

For respondent/State : Mr. Ravish Verma, GA &
Mr. V.B. Singh, Panel Lawyer

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

1. Since both the aforesaid appeals arise out of same judgment/incident, they are heard analogously and are being disposed of by this common judgment.
2. Both the aforesaid appeals are preferred against the judgment of conviction and order of sentence dated 27-9-2010 passed by the Sessions Judge (Atrocities) Korba, Session Division Korba in Sessions Trial No. 6 of 2004 wherein the said Court has convicted the appellants for commission of offence under Section 376(2)(g) of the IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of Rs.5,000/- with default stipulations.
3. In the present case, prosecutrix is PW/10. As per prosecution case, on 19-6-2002 prosecutrix along with her husband Basant Singh went to the house of Indrakunwar at Mohdapara and on 24-6-2002 she was returning along with Khilawan, Indrakunwar and Basant and when they reached near Hasdeo river bridge, appellants came there by scooter and by saying that they are persons of Naka, snatched Danda from Basant and caught hold the prosecutrix near the bridge and when other companion tried to intervene, they have given threatening to them and committed forcible intercourse with prosecutrix one by one. The matter was

reported and investigated. After completion of trial, the trial Court convicted and sentenced them as aforementioned.

4. Learned counsel for the appellants would submit as under:

- i) The trial Court has passed the conviction only on the basis of statement of prosecutrix (PW/10), Basant Kuamr (PW/2) and Indrakunwar (PW/11), but as per version of Dr. K.B. Sonikar (PW/13) no injury was found on the body of the prosecutrix though she was aged 13 years, therefore, finding of the trial court is not based on proper marshalling of the evidence.
- ii There were material contradiction in the statements of the prosecution witnesses which have been ignored by the trial Court. PW/2 Basant who is eye-witness to the incident, has not supported the version of prosecution and it is not possible to commit rape upon a girl in presence of her guardians, therefore, the story is full of suspicion.

- lii) Prosecutrix did not know the name of the appellants, but she lodged the FIR by mentioning their names which creates doubt.
- iv) Finding of the trial Court is not based on legally admissible evidence, therefore, same is liable to be set aside.

5. 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.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. In the present case, date of incident is 24-6-2002 and report was lodged on the next day i.e., 25-6-2002 at Police Station in which names of the appellants are mentioned. PW/10 prosecutrix deposed before the trial Court that she had gone to village Bhadra from village Hardeva along with Indrakunwar and her husband Basant and while returning

from village Bhadra, at about 12 00 noon both appellants came there on motor-cycle and snatched club from the hands of Basant. Both appellants caught Indrakunwar who anyhow managed to overcome from the clutches of appellants and thereafter both the appellants took her to one room, made her laid down, undressed and committed rape on her one by one. Version of this witness is supported by version of Indrakunwar (PW/11) who deposed on same line. PW/2 Basant also deposed that first the appellants tried to catch Indrakunwar thereafter he along with Indrakunwar fled away from the spot and reported the matter to Police Station. From the version of Basant (PW/2), it is clear that the appellants are authors of the crime. It is not a case that he has not supported the version of prosecution as alleged by defence side, therefore, argument advanced on behalf of the appellants regarding witness Basant (PW/2) is not sustainable.

8. Dr. G.S. Jatra (PW/4) who examined both the appellants found them capable of intercourse. There is no material contradiction in the statement of the prosecutrix and other witnesses and they are firm in their statement on the material point. 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.

9. 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,

10. In the present case, incident took place on 24-6-2002 and report was lodged on the next day i.e. ,25-6-2002, therefore, there is delay of one day 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 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.

11. The trial Court has elaborately discussed the entire evidence and recorded finding that the appellants in-furtherance of common intention committed rape on prosecutrix and the appellants are the actual authors of crime of rape. Looking to the evidence, it is established that gang rape was committed on prosecutrix which is punishable under Section 376(2)(g) of the IPC.

12. After assessing the evidence, this court has no reason to say that the appellants have been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses and this court has no reason to substitute a contrary finding. Gang rape is punishable under Section 376(2)(g) of IPC for which the trial Court has convicted the appellants and same is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of gang rape under Section 376 (2)(g) of IPC which cannot be

termed as harsh or unreasonable or disproportionate.

Sentence part is also not liable to be interfered with.

14. Accordingly, the appeals being devoid of merits are liable to be and are hereby dismissed. As the appellants are reported to be in jail, therefore, no further order for their arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju