

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 13-11-2019

Delivered on 06-12-2019

CRA No. 55 of 2009

- Ramlakhan s/o. Ramautar, aged about 25 years, occupation – Agiculturer, r/o. Village Ghutura, para, Gouripar, Premnagar, District Surguja (CG).

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Premnagar, Distt.- Surguja CG

---- Respondent

 For Appellant : Mr. Shailendra Sharma,
 Advocate

For respondent/State : Mr. Ravish Verma, Govt. Adv.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-12-2008 passed by the First Additional Sessions Judge, Surajpur, District Surguja (CG) in Sessions Trial No. 159 of 2008 wherein the said Court convicted the appellant for commission of offence under Sections 450, 376 (1) and 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.100/-, RI for seven

years and fine of Rs.200/- and RI for one year respectively with default stipulations.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on 1-1-2008 at about 3.00 pm when prosecutrix was alone in her house, appellant entered into her house and committed sexual intercourse with her without her consent and against her will and also threatened her to kill. 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) There is delay in lodging the FIR which shows that story is concocted. There is enmity between the appellant and husband of the prosecutrix and he has been falsely implicated on account of enmity.
- ii Medical report is not supporting the version of prosecution, therefore, prosecutrix is a consenting party.
- lii) The trial court ignored major contradictions and omissions in the statement of the

prosecution witnesses, 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. As per version of prosecutrix (PW/1), when she was alone in her house, appellant entered into her house and removed her saree and thereafter committed sexual intercourse with her without her consent. She further deposed that appellant threatened to beat her if she would narrate the incident to anyone. Version of this witness is supported by version of Manmati (PW/2), Keso Bai (PW/3), Ramvilas (PW/7) and again it is supported by Dr. S.K. Gupta (PW/5) who examined the appellant and found him capable of sexual intercourse. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Version of this witness is supported

by FIR (Ex.P/10) in which name of the appellant is mentioned as culprit and his act of rape is also clearly mentioned in the said FIR lodged by the prosecutrix.

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. When her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence regarding commission of offence. 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. From the entire evidence, it cannot be inferred that prosecutrix was a consenting party.

8. 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. Considering all the facts and circumstances of the case, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for house trespass and for committing rape which is punishable under Section 450 and 376(1) of IPC is hereby affirmed.

9. From the evidence of prosecutrix (PW/1) it is not clear that the appellant was having any article to assault her. As per version of prosecutrix only threat was that she should not narrate the story to others, otherwise, he will beat her. This statement is not sufficient to establish charge under Section 506 Part II of IPC. For establishing charge under Section 506 Part II of IPC, it has to be established that appellant was determined to execute threat to the spot. In the present case, same is not established, therefore, any word uttered by the appellant is mere fury which has a sound but has no substance. Accordingly, conviction of the appellant under

Section 506 Part of IPC is set aside and he is acquitted of the charge under Section 506 Part II of IPC.

10. Heard on the point of sentence.

The trial Court awarded RI for seven years on each count for offence of rape under Section 376 (1) of IPC which is minimum and 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 and same is hereby upheld.

11. Accordingly, the appeal is partly allowed. As per report of jail authorities the appellant suffered full jail term and released from jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju