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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.514 of 2012**

Bhuwan Lal Mandavi, S/o. Shri Deenuram Mandavi, aged about 20 years, R/o. Tidhai Kondal Chowki Kachche, PS Bhanupratappur, Distt. Kanker (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station Bhanupratappur, Distt. Kanker (CG)

---- Respondent

And**Criminal Appeal No.530 of 2012**

Shymlal Mandavi, S/o. Lacchuram, aged about 23 years, R/o. Tadhai Kondal Chowki Kachche, PS Bhanupratappur, Distt. Kanker (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through District Magistrate Kanker Distt. Uttar Bastar Kanker (CG)

---- Respondent

 For the appellants : Shri Akhtar Hussain and Shri Shivendu
 Pandya, Advocates
 For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03.01.2019.**

1. As both the appeals arise out of common judgment, they are being heard and disposed of by a common judgment.
2. These appeals are directed against the judgment dated 05.5.2011 passed by Sessions Judge, Kanker, Distt. North Bastar Kanker (CG) in Session Trial No.19/2011 wherein the said Court convicted both the appellants for commission of offence under

Section 376(2)(g) of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of 1000/- with default stipulations to each of the appellants.

3. In the present case, prosecutrix is PW-1. As per the version of the prosecution on 26.9.2010 at about 10.00 pm both the appellants in furtherance of common intention took the prosecutrix to the river side where appellant Bhuwan Lal put some cloth in the mouth of the prosecutrix and thereafter appellant Shyamlal committed forcible sexual intercourse with her without her consent and against her will. The matter was reported and investigated and the appellants were convicted as mentioned above.

4. Learned counsel for the appellants submit as under:

(i) There is material contradiction in the statements of prosecutrix (PW-1) and her sister Anusuiya (PW-2).

(ii) Appellant Bhuwan Lal has not committed intercourse but this aspect of the matter was lost sight by the trial Court.

(iii) As per the report of the medical expert Dr. Priti Singh (PW-4) it may be a case of attempt to rape, therefore, finding of the trial Court regarding rape is contrary to the report.

(iv) There is enmity between the family of the appellants and the complainant and the appellants have proved the enmity therefore, they have been roped in false charges and finding of the trial Court is not liable to be sustained.

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 marshaling of the evidence and the

same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. Prosecutrix (PW-1) deposed before the trial Court that at the time of the incident, she had gone to answer the call of nature with her sister Anusuiya where appellant Bhuwan Lal put handkerchief in her mouth and Shyamlal dragged her towards the riverside, undressed her and committed sexual intercourse with her. She further deposed that due to putting handkerchief on her mouth she was not able to cry. She further deposed that Shyamlal committed rape twice during the night. Version of the prosecutrix is supported by the version of Anusuiya (PW-2), who was eyewitness account of the incident. She left the place out of fear when Bhuwanlal put the cloth in the mouth of the prosecutrix. Version of these witnesses is supported by the version of Manthir Singh (PW-3) to whom the incident was informed just after the incident. This witness is the father of the prosecutrix. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

7. Direct evidence is supported by the version of Dr. RD Kureti (PW-7) who examined appellant Shyamlal and found him capable to commit sexual intercourse. Dr. Priti Singh (PW-4) who examined the prosecutrix has also deposed that there was attempt to rape but the fact remains that there was direct evidence of rape against the appellant. Looking to the entire evidence, it appears that there is no material contradictions regarding commission of rape and participation of both the appellants.

8. Date of incident is 26.9.2010 and the report was lodged on the next day. 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.

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. After reassessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated. There is no

reason to disbelieve the evidence of the prosecutrix and other witnesses.

11. The trial Court has considered all the facts and circumstances of the case, therefore, the arguments advanced on behalf of the appellants is not sustainable. The trial Court recorded the finding of conviction and this Court has no reason to substitute a contrary finding.

12. Offence of gang rape falls under Section 376 (2)(g) of IPC for which the trial Court convicted the appellants and the same is not liable to be interfered with.

13. Heard on the point of sentence.

The trial Court awarded minimum sentence for the offence punishable under Section 376 (2)(g) IPC and less than minimum cannot be awarded. Therefore, sentence part is also not liable to be interfered with.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellants have been released from jail after serving the full jail sentence awarded to them and after remission granted to them by the jail authorities. In view of this no further order is required for their arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**