

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 15-02-2019

Judgment delivered on 15-03-2019

CRA No. 590 of 2012

- Bheem Singh @ Ramavatar s/o. Fatte Singh, aged about 25 years, Caste Gond, r/o. Village Jaliyadand, Psw Baikunthpur, Dist. Koreai (CG).

---- Appellant

Versus

- State of Chhattisgarh through SHO, Police Station Baikunthpur, District Korea (CG).

---- Respondent

 For Appellant : Mr. Bharat Rajput, Advocate
 appears as Amicus Curiae.

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

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19-6-2012 passed by the Session Judge, Korea, Baikunthpur, Dist. Korea (CG) in Sessions Trial No. 99 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 376 read with Section 511 of the IPC and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.5,000/-, with default stipulations.

2. In the present case, prosecutrix is PW/1 who is aged six years. It is alleged that on 26-7-2011 the father of the prosecutrix along with his wife was working at agricultural

field, at the same time appellant tried to commit rape on prosecution. One Shukla Singh informed about the incident to parents of the prosecutrix. 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 are major contradictions and omissions in the statement of the prosecution witnesses.
- ii The trial Court failed to appreciate that there is land dispute between the appellant and father of the prosecutrix, therefore, possibility of the false allegation cannot be ruled out.
- iii) Finding of the trial Court is not in the fitness of factual matrix and legal aspect of the matter, therefore, the same is liable to be reversed.

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. In the present case, date of incident is 26-7-2011 and report was lodged on the same day at Police Station Baikunthpur in which name of the appellant is mentioned as culprit and his act of attempting to rape is also mentioned in the said report. Prosecutrix PW/1 deposed before the trial Court that her parents went to the agricultural field for work and she was standing on road in front of her house and at the same time appellant caught her, took her near bushes, removed her undergarments and thereafter tried to commit rape on her. As per her version, she informed about the incident to the people of locality. Version of this witness is supported by version of PW/2 Rama Bai, who is mother of the victim, PW/3 Kunwar Singh, who is father of the victim, PW/4 Shukla Singh and Tej Singh (PW/5).

7. From the evidence, it is clearly established that appellant tried to commit rape on prosecutrix. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence. There is nothing to say that the appellant has been falsely roped with the charge and there is nothing to disbelieve the evidence of all the prosecution witnesses. The

report is promptly lodged and there is no scope to say that the appellant has been falsely implicated on account of dispute between two families. Argument advanced on behalf of the appellant is not sustainable.

8. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellant falls within mischief for which the trial Court has convicted the appellant and same is hereby affirmed. The sentence awarded by the trial court cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

9.. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju