

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-1-2019

Judgment delivered on 7-2-2019

CRA No. 892 of 2012

- Omkeshwar Sahu s/o. Bhagirathi Sahu, aged about 30 years, r/o. Village Gouribhatha, Police Station Arang, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through SHO, Police Station Arang, District Raipur (CG).

---- Respondent

 For Appellant : Mr. Y.C. Sharma, Advocate
 For respondent/State : Mr. Raghavendra Verma, GA

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 20-9-2012 passed by Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1985) Raipur (CG) in Special Sessions Trial No. 30 of 2012 wherein the said Court has convicted the appellant for commission of offence under Section 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on 9-1-2012 at about 5.00 p.m., prosecutrix along with her friend namely Koushilya Ratre

went to call of nature where the appellant who is with his friend Pitambar was hidden. The appellant caught prosecutrix and her friend teased them. When she cried one villager namely Dinesh Satnami saw them and when he raised voice, the appellant and his friend fled away from the spot. After passing of some time when prosecutrix was returning to her home at that time appellant caught her and forcefully took her to one old house in village and at night forcefully committed sexual intercourse with her and kept her whole night there and released her in the morning. 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) The trial Court has failed to appreciate the medical evidence available on record wherein no internal or external injury was found on the body of the prosecutrix and no definite opinion has been given regarding sexual intercourse.
- ii Age of the prosecutrix appears to be more than 18 years and it is a case of consent where report was lodged in a doubtful

manner.

- l ii) The trial Court ignored contradictions and omissions in the statement of the prosecutrix, therefore, finding arrived at by 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/1) deposed before the trial Court that she had gone to answer the call of nature towards canal along-with her friend namely Kaushilya where appellant and one other person Pitamber were hidden. Appellant caught her hand, when she cried, one Dinesh came to rescue her, but he left the place. Thereafter, appellant took her to one old house where she was confined for whole night and there he committed forceful sexual intercourse with her. Version of this witness is supported by version of Ku. Kaushilya Satnami (PW/2), Raj Kumar (PW/4), who is father of the prosecutrix.

All the witnesses have been subjected to searching cross-examination, but remained unshaken. Version of this witness is supported by version of Dr. V.S. Anant (PW/5) who examined the prosecutrix on 10-1-2012 and noticed that she was suffering pain in her private part. Again it is supported by FIR (Ex.P/1) which is lodged on the next day i.e., 10-1-2012 at Police Station Aarang in which name of the appellant is mentioned as culprit and his act of commission of rape is also mentioned in the said report. There is no contradiction in the statement of the prosecutrix and other 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 one day in lodging the report at Police Station. 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. Looking to the entire evidence, it cannot be said 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 and this court has no reason to substitute the contrary finding. The trial Court has evaluated the evidence elaborately and came to conclusion that the appellant is guilty of commission of rape which is punishable

under Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

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

Sd/-
(Ram Prasanna Sharma)
Judge

Raju