

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 902 of 2012****Reserved on : 16.01.2019****Delivered on : 30.01.2019**

Pritlal Yadav, S/o Samay Lal Yadav, aged about 28 years, R/o Village- Kuruva, Thana- Sahaspur Lohara, District- Kabeerdham (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through the District Magistrate, Kawardha, District- Kabeerdham (C.G.)

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.

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

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.09.2012 passed by Sessions Judge, Kabirdham (Kawardha) (C.G.) in Session Trial No. 71/2011, wherein the said court convicted the appellant for commission of offence under Sections 363, 354, 323 & 376/511 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 1000/-, R.I. for 1 year, R.I. for 6 months & R.I. for 5 years & fine of Rs. 1000/- respectively with further default stipulations. All the sentences are run concurrently.
2. As per version of the prosecution, on 05.10.2011 at about 5:30 p.m., one Mohan (PW-2) lodged a report at police station-

Sahapur Lohara that at about 3:00 p.m., the present appellant took his daughter-in-law who is aged about 5 years to river side and kept his finger in her private part and tried to outrage her modesty. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) From perusal of statement of the prosecutrix, offence of attempt to rape is not made out. Offence of attempt to rape is also not mentioned in the FIR.

(ii) There is enmity between the parties due to which the appellant has been falsely implicated.

(iii) The trial court has not evaluated material contradiction and omission in the statement of the prosecution witnesses.

(iv) The doctor who examined the prosecutrix has not given definite opinion, therefore, her version is not corroborating piece of evidence.

(v) The trial court has not appreciated the entire evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. In the present case, the prosecutrix (PW-1) is about 5 years old. She was residing with her grand-father Mohan (PW-2) and grand-mother Roop Kunwar (PW-7). The prosecutrix deposed before the trial court that the appellant taken her to pond side of the village for giving some food and then tried to commit rape and dived his finger/hand into her vagina. Version of the prosecutrix is supported by version of Mohan (PW-2), Roop Kunwar (PW-7), Somnath (PW-8) & Nagdas Manikpuri- Kotwar (PW-3) to whom the incident was informed and they supported version of the prosecutrix. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
6. In the present case, date of incident is 05.10.2011 and report was lodged at police station on the same day naming the appellant as culprit and his act of sexual assault is also mentioned in the said FIR. There is no delay in lodging the FIR. Version of these witnesses is supported by version of Dr. Pushpa Tarun (PW-9) who examined the prosecutrix and noticed (Ex. P/10) that hymen was torn, redness & swelling was seen near vagina. Again, it is supported by version of Dr. Abha Daharwal (PW-11) who examined the prosecutrix and noticed (Ex.P/19) that her hymen was torn mild inflammation & redness was seen near her private part.
7. True it is that attempt to rape is not mentioned in the FIR, but the fact remains that the FIR is not substantive piece of

evidence. Right of cross-examination of the witnesses before the trial court is always available to the defence side. From direct and medical evidence, it is clearly established that the appellant attempted rape on prosecutrix and outraged her modesty of a minor girl. As she was minor, she cannot be taken out of custody of lawful guardianship without consent of the guardian.

8. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the entire evidence, this Court has no reason to record contrary finding. Contravention of lawful guardianship is offence punishable under Section 363 of IPC, outraging modesty is offence punishable under Section 354 of IPC, causing voluntary hurt is offence punishable under Section 323 of IPC and attempt to rape is offence punishable under Section 376/511 of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

9. The trial court awarded jail sentence of 5 years for commission of offence under Section 376 of IPC. Looking to the gravity of offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

10. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun