

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-11-2019

Delivered on 06-01-2020

CRA No. 1051 of 2003

Chhat Ram Rolej s/o. Hagru @ Amol Suryavanshi, aged 43 years, resident of Lachhanpur, Police Station Baradwar, District Janjgir-Champa .

---- Appellants

Versus

- State of Chhattisgarh through District Magistrate, Janjgir-Champa (CG).

---- Respondent

For Appellant : Mr. Deepak Kumar Singh, Advocate

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

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 4-9-2003 passed by the Additional Sessions Judge, Sakti, District Janjgir-Champa (CG) in Session Trial No. 164 of 1999 wherein the said Court has convicted the appellant for commission of offence under Section 314 of IPC 1860 and sentenced him to undergo RI for five years and fine of Rs.500/- with default stipulations.

2. As per allegation of the prosecution, about three months from 21-4-1998 prosecutrix who was daughter of Jularam had gone to village Khamhia for obtaining photograph of herself and for that purpose she went to the studio of other co-accused Rikheshwar. When she reached there and asked for water, wife of other co-accused Rikheshwar namely Susheela went away to fetch water and during this time other co-accused Rikheshwar committed sexual intercourse with her. It is alleged that when the next menstrual cycle did not begin, prosecutrix informed other co-accused Rikhshwar about pregnancy on which he gave some tablets to the prosecutrix but when still the prosecutrix complained of the pregnancy, wife of other co-accused Susheela called on the prosecutrix to her house and asked to lay down on the bed and thereafter present appellant Chhat Ram who is brother-in-law of other co-accused Rikheshwar inserted some machine like object and rod in the private part of the prosecutrix and the other co-accused did not allow the prosecutrix to make shout by pressing her mouth. Prosecutrix became unconscious and thereafter her pain became unbearable. Prosecutrix was taken to Champa hospital and the matter was reported to Police Station by the prosecutrix as per FIR. Thereafter prosecutrix was shifted to Hospital at Sakti where she died on 25-4-1998 during treatment. The matter was investigated and after completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The evidence produced by the prosecution is highly suspicious and shaky in nature.
- ii The evidence of grand-mother of the prosecutrix is not dependable and dying declaration recorded by PW/16 Ghanaram Mahilang is not inspiring confidence.
- lii) There is no evidence against the appellant with respect to miscarriage
- lv Post-mortem report Ex.P/19 conducted by Dr. S. Mukherjee (PW/14) holds that the deceased was not carrying pregnancy. The trial court ought to have disbelieved the entire prosecution case.
- v) The trial court erred in holding that prosecutrix was less than 16 years at the time of alleged incident but for that there is no cogent and reliable record produced by the prosecution. The judgment is based on conjectures and surmises, therefore,

finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent 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.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. To substantiate the charge, prosecution examined as many as 20 witnesses. The defence side examined the evidence of Sajju Prasad (DW/1). PW/2 Ruchi Bai, is grand mother of the deceased prosecutrix. She deposed before the trial court that deceased prosecutrix informed her about rape by other co-accused Rikheshwar on her. Deceased also informed her regarding pregnancy and also informed that both co-accused Rikheshwar and Susheela Bai called her, caught her and thereafter present appellant Chhatram inserted iron rod in her private part to remove pregnancy.

7. PW/11 Gouri Bai deposed on same line that rod is inserted by Chhatram who is Surpanch and so called Doctor. In the present case, FIR (Ex.P/18) was lodged by the prosecutrix in which it is clearly mentioned that she conceived because of sexual intercourse by other co-accused Rikheshwar and it is also mentioned that present

appellant along with other two co-accused are involved in causing miscarriage because she conceived due to sexual intercourse by other co-accused Rikheshwar. FIR is proved by Sub Inspector PW/20 Quamruddin Khan that prosecutrix lodged the report on 21-4-1998 in which she has signed and this witness has also signed. Dr. Smt. C.K. Singh (PW/8) examined the deceased prosecutrix and found her in state of shock. This witness has found tenderness in her uterus and also found infection in her uterus. She clearly opined that infection in the uterus may be caused due to intervention of foreign body. As per version of this witness deceased prosecutrix informed her regarding insertion of rod in her uterus.

8. Dr. S. Mukherjee (PW/14) who conducted autopsy of the deceased prosecutrix on 26-4-1998 at 11.00 hours at District Hospital, Bilaspur opined that cause of death is septicaemia and shock due to peritonitis it means infection and toxemia which means infection under the abdomen. Dr. J. Singh (PW/10) examined the appellant Rikheshwar and found him capable of intercourse.

9. FIR is proved by author and same is made by deceased as to cause of his death and circumstances of the transaction which resulted in his death and cause of her death here come into question, therefore, FIR shall be treated as dying declaration. One other dying declaration is recorded by Ghanaram (PW/16) who is Naib Tahsildar

as per Ex.P/20 in which name of the present appellant is not mentioned but looking to the evidence of Ruchi Bai (PW/2), Gowri Bai (PW/11) and version of FIR involvement of the present appellant in crime in question is clearly established. In view of the entire evidence, argument advanced on behalf of the appellant is not sustainable.

10. The next question for consideration of this court is as to what was the age of the prosecutrix on the date of the incident I.e., date of sexual intercourse. In the present case, FIR was lodge on 21-4-1998. As per FIR, incident took place three months since lodging of the FIR, it means sexual intercourse is committed on prosecutrix in the month of January, 1998. As per version of Principal, S.R. Anil (PW/19) date of birth of the prosecutrix is 7-11-1983 as per school record. This document is historical document and there is nothing on record to say that document is forged one. The document has evidential value and therefore, age of the prosecutrix comes out around 15 years and two months at the time of incident and she was incompetent to give consent for any purpose. Again, from the entire evidence, it is clear that present appellant along with other two accused persons is involved in miscarriage of the deceased prosecutrix resulted into her death. From the evidence, it is clear that infection in the body of the deceased was caused due to foreign body in her uterus, therefore, no other view can be taken by this court what is recorded by the trial Court. Argument advanced on behalf of the

appellant is unsustainable and same is liable to be and is hereby rejected. The act of the appellant falls within mischief of Section 314 of IPC for which the trial court convicted him and this court has no reason to record a contrary view and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for five years for offence under Section 314 of IPC to appellant which cannot be termed as harsh or unreasonable or disproportionate looking to the death caused to an innocent girl by the appellant. Sentence part is also not liable to be interfered and same is hereby affirmed.

12. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare supersession warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 30-4-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju