

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 06-2-2020
Delivered on 17-2-2020

CRA No. 256 of 2003

- Videsh Kumar s/o. Chheduram Kenwat, aged 20 years, r/o. Ratakhari P.S. Korba, Tahsil and Dist. Korba (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Station House Officer, Police Station Korba, Tahsil & Dist. Korba (CG).

---- Respondent

For Appellant : Mr. Ashutosh Shukla and Mr. Alok Dewangan, Advocates

For respondent/State : Mr. Aman Kesharwani, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-5-2002 passed by the Additional Sessions Judge, Korba (CG) in Sessions Trial No. 164 of 2001 wherein the said Court has convicted the appellant for commission of offence under Sections 376 and 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for

seven years and to pay fine of Rs.250/- and RI for six months and to pay fine of Rs.250/-with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution in the intervening night of 17th & 18th February, 2001 at about 12.00 in the night appellant came to courtyard of prosecutrix when she was there to ease herself, caught hold her forcibly and after giving threat of life committed forceful sexual intercourse with her. 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) Prosecutrix is a consenting party and no injury was found on her body which supports the version of defence.
- ii Appellant is living in the adjacent house of the prosecutrix and he is well-known to the prosecutrix.
- lii) No report was lodged immediately after the incident even the family members are not informed about the incident.

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 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. Prosecutrix is PW/1 deposed before the trial court that on the date of incident at about 12.30 in the night she came to courtyard of her house from her room to ease herself and at the same time appellant entered into her house by crossing wall and caught hold her, pressed her mouth, threatened her to kill and thereafter appellant made her lay down, removed her garments and committed forceful sexual intercourse with her on threat of life. From her statement it is clear that the appellant fled away after the incident. As per version of this witness, she informed the incident to her husband namely Shiv Kumar. Version of this witness is supported by version of Shiv Kumar (PW/3), Ramlal (PW/2) and Baith Prakash (PW/4) to whom the incident was informed. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Version of these witnesses is supported by version of Dr. A.R. Porte (PW/7) who examined the appellant and found him capable of intercourse.

7. In the present case, date of incident is in the intervening night of 17th & 18th February 2001 and report was lodged at Police Station Korba on 18-2-2001 naming the appellant as culprit and his act of rape is also mentioned in the said report. The incident took place in the mid night of 18-2-2001 and report was lodged on the same day in the morning, therefore, there is no delay 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. In the present case report is lodged in the morning while the incident took place in the night, therefore, it is not a case of delay. 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, therefore, any little delay is not sufficient to throw out the prosecution case.

8. In the present case, 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, but in the

present case, there is ample corroborative piece of evidence to the statement of the prosecutrix. There is no material contradiction in the statement of prosecutrix and other witnesses and they are firm in their statement, therefore, it is not the case where material contradiction is established. 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, therefore, from the statements of the prosecution witnesses, it is clearly established that appellant committed rape and also committed criminal intimidation to kill the prosecutrix which falls within mischief of Sections 376 (1) and 506 Part II of the IPC. Taking into totality of the facts, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offences is hereby affirmed.

9. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC which is minimum prescribed for the said offence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits 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 super-session 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 31-7-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju