

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2384 of 1999

Reserved on : 21.01.2020

Delivered on : 20.02.2020

1. Babaram Kumhar, S/o Chamar Sai, aged about 35 years, Caste- Kumhar, R/o Village- Kalipur, P.S. Ramanuj Nagar, District- Surguja (M.P.) (Now C.G.)
2. Manki @ Ramdhan, S/o Tejoram Rajwar, aged about 40 years, Occupation- Contractor, R/o Village- Thanganpara, Surguja (M.P.) (Now C.G.) (Died/ Appeal abated) **---- Appellants**

Versus

The State of Madhya Pradesh (Now Chhattisgarh), through P.S. A.J.K. Ambikapur, District- Surguja (M.P.) (Now C.G.) **---- Respondent**

For Appellants : Mrs. Itu Rani Mukherjee, Advocate.

For State/respondent : Mr. Afroj Khan, Panel Lawyer.

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 30.08.1999 passed by Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act] Surguja, Ambikapur (C.G.) in Special Criminal Case No. 213/1998, wherein the said court convicted both the appellants for commission of offence under Sections 376 (2)(g) (Gang Rape) & 450 of IPC, 1860 and sentenced to undergo R.I. for 10 years each on each count. All the sentences to run concurrently.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on the date of incident i.e. on 27.09.1998, the appellants entered into house of the prosecutrix and committed sexual intercourse one by one. At the time of incident, the prosecutrix was all

alone and she made hue and cry. On hearing her cry, one Sanghelu (PW-4) reached to the spot and saw that the appellants running away from her house. The matter was reported and investigated, appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. During pendency of this appeal, appellant No. 2- Manki @ Ramdhan died and his appeal stands abated. Now the appeal is being heard for the appellant- Babaram Kumhar only.
4. Learned counsel for the appellant submits as under:-
 - (i) The date of incident is 27.09.1998, but the report was lodged on 29.09.1998 vide Ex. P/1, but no explanation was given for delay of 2 days, therefore, case of the prosecution is doubtful.
 - (ii) Medical evidence is not supported version of the prosecution as there is no external injury on body of the prosecutrix.
 - (iii) The house of the prosecutrix was in a dense locality near the public tank in the village and it was not possible for the appellants to commit gang rape in the said locality.
 - (iv) Version of the prosecutrix is also not reliable piece of evidence and it is not a case where her statement is dependable.
 - (v) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.
6. The prosecutrix (PW-1) deposed before the trial court that on the date of incident i.e. on 27.09.1998, she was all alone in the house at day time about 1:00 p.m. where the appellant and co-accused namely Manki @ Ramdhan entered into her house and thereafter, the appellant- Babaram Kumhar made her lie-down and another co-accused pressed her mouth and the appellant committed rape on her. As per version of this witness, the appellants have pressed her hands and mouth, but somehow she cried and on hearing her cry, one Sanghelu came there and thereafter, the appellants flee away. Version of this witness is supported by version of Sanghelu (PW-4) who reached in the house of the prosecutrix on hearing her cry and found the appellant and co-accused were fled away. Again, version of this witness is supported by version of Bifan (PW-2) and Udaylal (PW-4). All these four witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
7. There is nothing on record to say that the prosecutrix deposed against her dignity to falsely implicate the appellants. 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. The evidence of the prosecutrix is inspiring confidence, therefore, no corroboration is necessary.
8. There is delay of two days in lodging the report, but the fact remains that when a report of rape is to be lodged, there are several factors which weigh in mind of the prosecutrix and her family members. Only after giving it serious thought, the prosecutrix decided to lodge the

report, therefore, case of the prosecution cannot be thrown out merely on the basis of two days delay in lodging the report. In view of the above, the argument advanced on behalf of the appellant is not sustainable.

9. The trial court elaborately discussed the entire evidence and recorded finding that the appellant and another co-accused committed gang rape on the prosecutrix. After reassessing the same, this Court has no reason to record contrary finding. The act of both the appellants falls within mischief of Section 376 (2)(g) of IPC, 1860 for which the trial court convicted the appellant and his conviction is hereby affirmed.

Heard on the point of sentence.

10. The trial court awarded R.I. for 10 years for commission of offence under Section 376 (2)(g) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. The appellant- Babaram is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the said appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 31st August, 2020.

**Sd/-
(Ram Prasanna Sharma)
Judge**