

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 24-01-2020

Delivered on 20-02-2020

CRA No. 820 of 2009

- Tapodhan S/o Shatruhan Prasad Ogarem aged 29 years, R/o Piparsatti, Police Station Akaltara, District Janjgir (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Akaltara, District Janjgir-Champa (CG).

---- Respondent

 For Appellant : Mr. Shaleen Singh Baghel, Advocate

For respondent/State : Mrs.;Shubha Shrivastava, 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 4-11-2009 passed by the Sessions Judgem Janjgir-Champa in Sessions Trial No. 110 of 2009 wherein the said Court has convicted the appellant for commission of offence under Sections 457, 506 Part II & 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for two years and fine of Rs.500/-, RI for two years and fine of Rs.500/- and RI for seven years and fine of Rs.2000/- with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, date of incident is 23-3-2009. Prosecutrix is PW/7. As per version of prosecution, on the date of incident appellant entered into the house of prosecutrix having knife in his hand and after threatening her 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) Version of prosecutrix is not supported by version of other witnesses, therefore, version of prosecutrix is not dependable.
- ii Hariram (DW/1) deposed that due to previous enmity false report was lodged but his version is overlooked by the trial court.
- lii) The trial court has not evaluated the evidence properly, therefore, finding of 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. In the present case, date of incident is 23-3-2009 and report was lodged on the same day at Police Station Akaltara as per Ex.P/2 in which name of the appellant is mentioned as culprit and his act of house breaking, threatening and rape is also mentioned in the said report which is lodged by the prosecutrix. Prosecutrix (PW/7) deposed before the trial court that the incident took place at about 2.00 a.m., in the mid night. The appellant entered into her house where she was sleeping and threatened her by showing knife and thereafter he came over her and committed rape on her. From her statement it is clear that appellant committed lurking house trespass and committed rape on her. This witness has been subjected to searching cross examination but nothing could be elicited in favour of defence. PW/8 Dr. C.G. Singh who medically examined the appellant found him of capable intercourse.

7. Learned counsel for the appellant contended that the version of prosecutrix is not supported by the evidence of other witnesses, therefore, her version should not be acted upon.

8. In view of this court, the incident took place in the mid night at 2.00 a.m., where nobody was present. Offence is committed in secrecy which is confined place. The family members were not there at the time of incident, therefore, any person who had no

occasion to see the incident or who were not available due to mid-night, corroborative piece of evidence cannot be collected. The investigating Officer cannot be directed to collect evidence which is not real evidence. No one was available in the mid-night, there is nothing to call for supportive piece of evidence or to direct anyone to collect fake evidence. There is nothing on record that the appellant has been roped in a false charge. There is nothing on record that prosecutrix is deposing against the appellant out of grudge or otherwise.

9. No girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospects, therefore, there is nothing to disbelieve the testimony of the prosecutrix. Version of the prosecutrix is further strengthened by FIR which is lodged on the same day at Police Station. 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 the present case, prosecutrix is firm in lodging the report on same day, therefore, it can be concluded that the appellant is author of the crime.

10. Hariram (DW/1) deposed about some different dispute which has no relevancy in the present case. The offence charged is committed in secrecy, therefore, version of defence is not helpful in adjudication of the matter.

11. The trial court has elaborately discussed the entire evidence and after going through the record, this court has no reason to take a contrary view what is recorded by the trial court. Argument advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief for which the trial Court convicted him and same is affirmed. The trial Court awarded RI for seven for offence of rape under Section 376 (1) of IPC which is minimum prescribed and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

12. 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 31-8-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju