

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3010 of 1999

Reserved on : 16.12.2019

Delivered on : 06.01.2020

Ghushu @ Bhukhan, S/o Vishnu Yadav, aged 28 years, R/o Village- Guma,
Police Station- Urla, District- Raipur (C.G.) **---- Appellant**

Versus

The State of Madhya Pradesh (Now Chhattisgarh) through the Aarakshi
Kendra, Urla, District- Raipur (M.P.) (Now C.G.) **---- Respondent**

For Appellant : Mr. Mirza Kaiser Baeg, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, 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 20.05.1999 passed by Special Judge/ Special Court [under Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989], Raipur (M.P.) (Now C.G.) in Session Trial No. 342/1998, wherein the said court convicted the appellant for commission of offence under Sections 450 & 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 5 years and R.I. for 7 years respectively. 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 15.07.1998 at about 10:00 a.m., the prosecutrix was at her home at Village- Guma where the appellant entered into by commission of trespassing and committed rape on her. The matter was reported, 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) The prosecutrix is consenting party, therefore, offence under Section 376 (1) of IPC is not made out.
 - (ii) Medical report is not supporting version of the prosecution.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, 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. To substantiate the charge, the prosecution examined as many as 9 witnesses. The prosecutrix (PW-1) deposed before the trial court that at the time of incident, she was all alone in the house because her father and mother had gone outside. The appellant entered into the house and demanded water from the prosecutrix. The appellant further enquired as to where is her mother, when the prosecutrix replied that her mother is out for work, the appellant closed the door of the house and tied hands and legs of the prosecutrix by cloth, removed her undergarment, thereafter, committed sexual intercourse with her and flee away. The prosecutrix further deposed that she informed her mother, brother and sister-in-law (Bhabhi) regarding the incident and thereafter, the matter was reported on 16.07.1998 as per Ex.P/1 in which name of the appellant is mentioned as culprit and his

act of rape is also mentioned in the said report.

7. Version of this witness is unrebutted during cross-examination and it is further supported by version of Diwakar Nishad (PW-2), Smt. Savitri Bai (PW-3) and Kamal Narayan Sharma (PW-5). It is again supported by version of Dr. M.P. Pujari (PW-4) who examined the appellant and found him capable of intercourse. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. The statement of the prosecutrix is quite natural and inspiring confidence and when her evidence is inspiring confidence, no corroboration is required. In the present case, there is ample corroboration from evidence of prosecutrix and other supporting piece of evidence, therefore, there is no reason to reject the version of the prosecutrix.
9. It is true that there is one day delay in lodging the report, but the delay in lodging the report in the case of sexual assault cannot be equated with the case involving other offences. The family members after giving it serious thought decided to lodge 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. There are several factors which weigh in mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In view of the above, the argument advanced on behalf of the appellant is not sustainable.
10. From the evidence, it is established that the prosecutrix was not

consenting party. The appellant tied her hands and legs by cloth which shows that the act was performed forcefully without consent of the prosecutrix and against her will, therefore, the argument advanced on behalf of the appellant is not sustainable.

11. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and other witnesses. The act of the appellant falls within mischief of Sections 450 & 376 (1) of IPC, 1860 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

12. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) 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.
13. The appellant 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 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 30th April, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge