

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3146 of 1999

Reserved on : 20.01.2020

Delivered on : 20.02.2020

Akhilesh Kumar, S/o Jaipal Ram Chouhan, aged about 21 years, Occupation- Cultivation, R/o Village- Konpara, P.S. Farsabahar, Tahsil- Kunkuri, District- Jashpur Nagar (M.P.) (Now C.G.)

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh) through District Magistrate, Jashpur Nagar (M.P.) (Now C.G.)

---- Respondent

For Appellant : Mr. J.P. Shukla, 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 16.10.1999 passed by Additional Session Judge, Jashpur Nagar (C.G.) in Session Trial No. 64/1999, wherein the said court convicted the appellant for commission of offence under Sections 366 & 376 (2)(g) (Gang Rape) of IPC, 1860 and sentenced to undergo R.I. for 2 years and fine of Rs. 1000/- & R.I. for 5 years and fine of Rs. 2000/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 29.12.1997 at about 1:00 p.m., co-accused namely Sandhya of Village- Tiklipara went to house of her friend Laxmi Bai

where the prosecutrix present and asked them to company her for going to outside the village and she handed over both of them in company of the appellant and one other person namely Mahendra. The appellant took the prosecutrix to house of his aunt and there he committed rape on the prosecutrix. The matter was reported and investigated, 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) Finding of the trial court that the prosecutrix is below age of 16 years is not proper.

(ii) The medical evidence is not supportive piece of evidence regarding commission of rape on the prosecutrix.

(iii) Version of the prosecution witnesses is not reliable because they are not constant, 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.

4. I have heard learned counsel for the parties and perused the records.

5. The prosecutrix (PW-1) deposed before the trial court that she had gone outside of her house with one Laxmi Bai at the instance of Sandhya who handed over the prosecutrix and Laxmi Bai to appellant and one Mahendra Ram. As per version of this witness, the appellant

committed rape on her and one other person namely Manmohan Chouhan also committed rape on her. Version of this witness is unrebutted during cross-examination. Version of this witness is supported by version of Dhaneshwar Yadav (PW-2) and his version is also unrebutted during cross-examination. Defence witness namely Chunnuram Bhagat (DW-1) deposed before the trial court regarding co-accused Sandhya and he did not depose anything regarding the incident, therefore, from the defence witness, version of the prosecutrix and supportive evidence is not rebutted.

6. 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 is to be followed at par with injured witnesses. In the present case, there is nothing on record to say that the appellant has been roped with false charge. There is nothing on record to disbelieve testimony of the prosecutrix. The evidence of the prosecutrix is inspiring confidence, therefore, no corroboration is necessary.
7. In the present case, date of incident is 29.12.1997 and report was lodged on 04.01.1998 i.e. after 6 days. 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 six days delay in lodging the report. The trial court elaborately discussed the entire evidence and recorded finding that the appellant committed

rape on the prosecutrix in furtherance of common intention of the appellant and one Manmohan Chouhan.

8. As per explanation 1 of Section 376 of IPC, 1860, where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Taking into consideration totality of the fact, the act of the appellant falls within definition of Gang Rape which is punishable under Section 376 (2)(g) of IPC. The prosecutrix was forced for illicit intercourse, therefore, act of the appellant is also falls within mischief of Section 366 of IPC.
9. The trial court elaborately discussed the entire evidence and recorded finding of conviction and after reassessing the same, this Court has no reason to record contrary finding. The act of the appellant falls within mischief of Sections 366 & 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 5 years for commission of offence under Section 376 (2)(g) of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence. 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 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 31st August, 2020.

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

Arun