

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25.02.2020

Delivered on 08.05.2020

CRA No. 498 of 2009

Shiv Mohan Prajapati, S/o- Late Shri Jaykaran Prajapati, Aged about- 36 years, occupation- Agriculture, R/o- Village Madhla, Police Station- Sonhat, District- Korea, Chhattisgarh. ---- **Appellant**

Versus

State of Chhattisgarh, Through- Station house officer, Sonhat, District- Korea, Chhattisgarh ---- **Respondent**

For appellant	: Mrs. Bulbul Agrawal, Advocate
For State	: Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 24th of June, 2009 passed by Sessions Judge/Special Judge (SC/ ST Act, 1989), Korea (C.G.), in Special Case No. 02/2006 wherein the said Court has convicted the appellant for charge under Sections 450 and 376(1) of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 3 years with fine of Rs. 500/-, R.I. for 7 years with fine of Rs. 500/- with default stipulations.
2. In the present case, prosecutrix is (PW-1). As per version of the prosecution on 7th of May, 2005 at about 5.00 pm in the evening while the prosecutrix was alone in the house. The appellant/accused entered in the house of the prosecutrix and forcibly committed sexual intercourse with her and thereafter run away. Matter was reported, investigated the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that F.I.R. was lodged in delay and no explanation was given for the said delay therefore, the case of the prosecution is not established beyond reasonable doubt. The medical report Ex.P-12 is not corroborating the case of the prosecution therefore, it is a case of consent. The trial Court has over-looked material omission in the statement of the prosecutrix therefore, finding of the trial Court is liable to set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The prosecutrix (PW-1) deposed before the trial Court that at the time of incident the appellant came to his house and called the name of her husband. When she replied that her husband is not at home the appellant entered into the house and caught her hold, made her lay down in the earth, removed her garment and thereafter committed sexual intercourse with her. As on her cries, her husband and other person seen the appellant flee from her house. Version of this witness is supported by version of the Sundeli (PW-8) and Ramdev (PW-9) who have seen the appellant flee from the house of the prosecutrix. All the witnesses have been subjected to searching to cross examination and nothing could be elicited in favour of the defence. Version of these witnesses is further supported by F.I.R. Ex.D-1, in which name of the appellant is mentioned as culprit and his act of rape is also mentioned. There is nothing on record to say that the appellant roped in

false charge. There is nothing on record that prosecutrix roped the appellant in false charge. It is by now well settled that the conviction of a person for the commission of rape, can be based on the sole testimony of the prosecutrix provided the evidence of the prosecutrix is cogent, reliable and inspiring confidence. In the present case there is ample corroboration with the evidence of the prosecutrix. As far as delay in lodging of an F.I.R. is concerned, it is not sufficient to throw the case of the prosecutrix by saying that F.I.R. was lodged in delay.

6. The delay in lodging an FIR in a rape case is not of much "significance" as the victim has to muster courage to come out in open and expose herself in a "conservative social milieu".

In rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstance is not of significance. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all psychological inner strength to undertake such a legal battle.

7. In the present case, the F.I.R. was lodged in delay may be based on above reasons therefore, finding of the trial Court is not liable to be interfered with. Argument advance on behalf of the appellant is not sustainable. Act of the appellant falls within mischief of the Section 450 and 376(1) of the I.P.C. and same is hereby affirmed. Trial Court awarded 7 years sentence for offence under Section 376(1) which is minimum prescribed sentence for the said offence. It cannot be termed as harsh,

disproportionate and unreasonable therefore, sentence part is also not interfered with.

8. Accordingly, appeal filed by the appellant is hereby dismissed.

As per report of jail authority he has suffered full jail term therefore no further order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle