

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1214 of 2001

Reserved on : 22.01.2020

Delivered on : 20.02.2020

1. Kanchan Singh, S/o Raj Singh, aged about 29 years.
2. Ratia, S/o Kenda Ram Kanwar, aged about 30 years.
R/o Mareya, O.P. Udaypur, P.S. Lakhanpur, District- Surguja (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station: Lakhanpur, District- Ambikapur/ Surguja (C.G.)

---- Respondent

For Appellants : Mrs. Savita Tiwari, 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 07.12.2001 passed by Session Judge, Ambikapur, Surguja (C.G.) in Session Trial No. 12/2001, wherein the said court convicted both the appellants for commission of offence under Section 376 (2)(g) (Gang Rape) of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 5000/- each with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 25.12.2000 at about 12:00 midnight, the prosecutrix was at her home at Village- Mareya where both the appellants entered into and firstly appellant No. 1- Kanchan Singh committed rape on her

while appellant No. 2- Ratia was standing on door and thereafter, appellant No. 2- Ratia also tried to commit rape on her. The matter was reported and investigated, appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) The prosecutrix mentioned in FIR that rape has been committed twice, but she has not supported in her earlier version in the court.

(ii) Medical evidence is also not supportive piece of evidence.

(iii) Version of the prosecution witnesses are contradictory in nature, therefore, the same is not dependable.

(iv) 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.

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 was sleeping in her house at night where appellant No. 1- Kanchan Singh entered into and committed rape on her. At the time of commission rape by Kanchan Singh, appellant No. 2- Ratia was standing at door and thereafter, Ratia tried to commit rape on her. Version of this witness is subjected to searching cross-examination, but nothing

could be elicited in favour of the defence. Version of this witness is supported by version of Bhuneshwari (PW-2) who has been informed by the prosecutrix regarding the said incident.

6. Dr. A.R. Jayant (PW-6) examined appellant No. 1- Kanchan Singh and found him capable of intercourse. From evidence, it is clearly established that both the appellants came together and appellant No. 1- Kanchan Singh committed rape on the prosecutrix while appellant No. 2- Ratia tried to commit rape on her. 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.
7. In the present case, both the appellants have made sexual assault against the prosecutrix, therefore, both were acting in furtherance of common intention and their act is gang rape as defined in Section 376(2)(g) of IPC. Though, an affidavit (Ex.D/1) was filed after examination of the prosecutrix by the prosecutrix and defence witnesses namely Aghan Sai (DW-1), Dhuran (DW-2) and Vijay Narayan Singh (DW-3) have been examined, but the said affidavit has no evidentiary value because version of the prosecutrix has already been recorded on court on oath and she was subjected to searching cross-examination, therefore, her deposition on oath shall be acted upon. Again, defence witnesses have not deposed anything regarding the incident in question, therefore, their version is not sufficient to rebut the version of the prosecutrix and other supportive evidence.

8. On overall assessment of the evidence, the trial court recorded finding that it is a case of gang rape. 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.
9. 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 appellants is not sustainable.
10. 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 both the appellants falls within mischief of Section 376 (2)(g) of IPC, 1860 for which the trial court convicted both the appellants and the same is hereby affirmed.
Heard on the point of sentence.
11. 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.

12. The appellants are reported to be on bail, their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against both the appellants and after their arrest, they 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