

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 21.01.2020

Judgment delivered on 17.02.2020

Criminal Appeal No. 215 of 2011

Sanat Kumar Varma S/o. Baharan, aged about 22 years,
R/o. Dunda, Thana Bemetara, Distt. Durg (CG)

----Appellant

Versus

State of Chhattisgarh Through Police Station Bemetara,
Distt. Durg (CG)

---Respondent

For appellant : Shri Samir Singh, Advocate
For respondent/State: Shri Ishwar Jaiswal , Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. The appeal is directed against judgment dated 07.3.2011 passed by Additional Sessions Judge, Bemetara, Distt. Durg (CG) in Session Trial No.51/2010 wherein the said Court convicted appellant for commission of offence under Sections 450 and 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 03 years and to pay fine of Rs.500/- and RI for 07 years and to pay fine of 1000/- respectively with default stipulation.

2. In the present case prosecutrix is PW-6. As per the version of the prosecution, on the date of incident, i.e. 02.6.2010 at about 7.00 pm when the prosecutrix was alone in her house, the appellant entered into the house, caught hold her and committed rape with her. At that time, husband of the prosecutrix came there and saw the incident. Thereafter, report was lodged. The matter was investigated and the appellant has been convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Dilip Verma (PW-7), husband of the prosecutrix, borrowed a sum of Rs.20,000/- from father of the appellant and when father of the appellant demanded the money back, the prosecutrix lodged false report against him.

(ii) From the evidence of the prosecutrix, it appears that she was the consenting party.

(iii) The trial Court has overlooked the material contradictions and omissions in the version of prosecution witnesses and has not evaluated the entire 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 marshaling of the evidence and the

same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. In the present case date of incident is 02.6.2010 and FIR was lodged on the same day at Police Station Bemetara as per Ex-P/7. In the said FIR name of the appellant is mentioned as culprit and his act of house trespassing and rape is also mentioned.

7. Prosecutrix (PW-6) deposed before the trial Court that at the time of the incident, she was alone in her house and was sleeping. She further deposed that the appellant entered into her house and committed sexual intercourse with her forcibly. In the meantime, her husband returned and tried to caught the appellant but he fled away from the spot. Version of this witness is unrebutted during cross-examination and it is supported by the version of her husband Dilip Verma (PW-7) and Pusru Ram (PW-2). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. It is submitted on behalf of the appellant that Jarab Singh Verma (PW-1) deposed before the trial Court that husband of the prosecutrix informed him that his wife is having illicit relation with

the appellant, therefore, the prosecutrix is a consenting party. In view of this court, this argument is without substance. Said Jarab Singh has not stated before the investigating officer while recording his statement under Section 161 CrPC that husband of the prosecutrix informed as mentioned above. This witness has stated different version in differ stages and looking to his unstable statement, he is not reliable. Version of the prosecution witnesses is supported by version of Dr. Naresh Kumar Tiwari (PW-5) who found the appellant capable to perform sexual intercourse.

9. In the present case there is no delay in lodging the report as the matter is reported in the same day of the incident. There are several matters which weigh in the minds of the family members before coming to the police station. 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 to be followed at par with an injured witness and and taking into totality of the facts, evidence of the prosecutrix inspires confidence, therefore, no corroboration is necessary.

10. Statement of the prosecutrix inspires confidence, therefore, there is nothing on record to say the appellant has been roped in false charges. There is nothing to disbelieve the testimony of the prosecutrix. The trial Court elaborately discussed the entire evidence and recorded finding of conviction. After reassessing

the entire evidence, this Court has no reason to record a contrary finding.

11. In view of the above, arguments advanced on behalf of the appellant is not sustainable. Act of the appellant falls within mischief under Section 450 and 376(1) IPC for which the trial Court convicted and the same is hereby affirmed. The trial Court has awarded sentence of 07 years for offence under Section 376(1) IPC which is minimum and less than minimum cannot be awarded. Therefore, sentence part is not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant is in jail, therefore, no further order for his arrest etc. is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE