

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 527 of 2006**

1. Raghunath S/o Vanshdhari Kumhar, aged about 40 years, R/o Barour, P.S.I. Marwahi, District Bilaspur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station Marwahi, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Miss Pragya Pandey, Advocate.
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****09/01/2020**

- 1) This appeal is filed under Section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 29/06/2006 passed by Additional Session Judge, (Fast Track Court), Pendraroad in Session Trial No. 365/2005; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 376 of Indian Penal Code (in short "IPC")	R.I. for 7 years & fine of Rs. 1000/- in default of fine additional R.I. for 3 months.

- 2) No one appeared on behalf of the appellant, when the matter is called on 28/11/2017 and today as well. The appeal is of the year 2006. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.
- 3) Miss Pragya Pandey, Advocate, present in the Court, empaneled

Lawyer of High Court Legal Services Committee, on being asked by this Court, she is ready to argue the matter. Therefore, this Court appoints Miss Pragya Pandey, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.

- 4) Case of the prosecution in brief is that on the date of incident i.e. on 15/06/2005 at around 12:00 AM to 01:00 AM (at night) the prosecutrix aged about 16 years was at her matrimonial home at village Baror. When prosecutrix was sleeping alongwith with her sister-in-law (Nanad) then her father-in-law/appellant having entered into the room of prosecutrix threw her on the ground, gagged her mouth, committed forcible sexual intercourse with prosecutrix and threatened that if she will cry he will kill her. At the time of incident, prosecutrix and her sister-in-law (Nanad) aged about 13 years were in home at village Baror and her husband had gone to village Chichgohana for doing roof tiles work. Prosecutrix narrated above incident to her brother-in-law (Jeth) and sister-in-law (Jethani) and her parents on the next day and her father PW-02 took her back to village Chichgohana. After 5 days, i.e. on 20/06/2005 FIR Ex. P-1 was lodged by prosecutrix in the Police Station Marwahi against the appellant. On the basis of this report Crime No. 71/ 2005 under Section 376 of I.P.C. was registered. After the written consent obtained from the parents of the prosecutrix vide Ex. P-7 and also of the prosecutrix vide Ex. P-2 she was medically examined. Peticot of the prosecutrix was seized as per Ex. P-3. Spot map prepared as per Ex. P-4 and Ex. P-5. Underwear of accused was also seized as per Ex. P-8 and vaginal slides were prepared and seized as per Ex. P-9. Prosecutrix was examined by PW-10 Dr. Shela Saha vide Ex. P-18. According to the medical report no injury was found on the person of the prosecutrix, hymen was ruptured and the Doctor could not give any definite opinion regarding rape. However, two vaginal slides were prepared for

chemical examination. After recording the statement of the witnesses and completing the formalities of investigation, charge-sheet was filed against the accused/appellant for the offence punishable under Section 376 of IPC.

- 5) The Trial Court framed charge against the accused/appellant under Section 376 of IPC which was denied by him and he prayed for trial.
- 6) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Prosecutrix, PW-02 Rajbhan (father of prosecutrix), PW-03 Munni Bai (mother of prosecutrix), PW-04 Sukhni Bai, PW-05 Sitaram, PW-06 Harvinder Singh (S.I.), PW-07 Shivdayal, PW-08 T.R. Gautam (A.S.I.), PW-9 Sushil Kumar Jaiswal (Patwari), PW-10 Dr. Sheela Saha, Medical Officer. The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In his defence he examined one Khasti Bai as DW-01.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in para 1 of this judgment.
- 8) Learned counsel for the appellant submits that the appellant has been falsely implicated in this case by the prosecutrix. From the evidence it has come on record that the prosecutrix was not willing to live with her husband, a maintenance case was also filed by the prosecutrix against her husband, no independent witness has supported the prosecution case and even the medical evidence also does not support the prosecution case according to which no injury, internal or external, was noticed on the person of the prosecutrix. Further there is inordinate delay of 5 days in lodging the FIR and no satisfactory explanation in this

regard has been offered by the prosecutrix. Therefore, the prosecution has utterly failed to prove its case against the accused appellant beyond all reasonable doubt and as such the Trial Court has committed an illegality in holding the appellant guilty of offence under Section 376 of IPC.

- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) From Paras 1 to 7 the prosecutrix has categorically stated in her deposition that on the date of incident while she alongwith her sister-in-law DW-01 Khasti Bai was sleeping in her matrimonial home, her father-in-law appellant entered her room in the night at around 12:00-1:00AM, threw her on the ground and after gagging her mouth committed forcible sexual intercourse with her. She further states that the appellant threatened her of being killed if she disclosed the incident to anyone. Next day she informed about the incident to her brother-in-law (Jeth) and sister-in-law (Jethani) as also to her parents on which her father PW-02 Rajbhan came there and took her back to her parental home and thereafter she lodged FIR Ex. P-1 on 20/06/2015. There is no major contradictions or omissions in the statement of the prosecutrix as compared to her Dairy statement Ex. D-1 and FIR Ex. P-1. FSL Report Ex. P-20 also corroborates the evidence of the prosecutrix according to which human sperm was found on the articles A, B & C i.e. Peticot, vaginal slides of the prosecutrix and underwear of the appellant. PW-02 Rajbhan (father of prosecutrix), PW-03 Munni Bai (mother of prosecutrix) have also supported the evidence of the prosecutrix and stated that after the incident they were informed about the same by the

prosecutrix that it is accused appellant who committed forcible sexual intercourse with her.

- 12) PW-04 Sukhni Bai, wife of the appellant and PW-05 Sitaram, son of the appellant have turned hostile and not supported the prosecution case. DW-01 Khasti Bai daughter of the appellant also admits in her deposition that on the date of incident she alongwith the prosecutrix was sleeping in her home. However, she has denied the occurrence of any incident as alleged by the prosecutrix. She has denied the suggestion that the latch of the door of the room where she alongwith the prosecutrix was sleeping can be opened from outside. However, in the face of consistent evidence of the prosecutrix which gets due corroboration from other oral and documentary evidence as discussed above, the evidence of DW-01 Khasti Bai who is daughter of the appellant does not inspire confidence of the Court suffers from the vice of interestedness. However, it does not affect the credibility of the evidence of the prosecutrix which has been duly corroborated by other oral and documentary evidence as discussed above.
- 13) There are catena of judgments passed by the Hon'ble Apex Court wherein it has been held that only the deposition of the prosecutrix by itself is also sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth. In **Md. Ali Vs. State of UP : 2015 (3) SCALE 274**, the Hon'ble Apex Court has held that "Be it noted, there can be no iota of doubt that on the basis of the **sole** testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based." and in **Mohd. Iqbal V. State of Jharkhand reported in (2013) 14 SCC 481**, the Hon'ble Apex Court has held that "There is no prohibition in law to convict the accused of rape on the basis of **sole** testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses."

- 14) In the present case the prosecutrix has consistently stated in the FIR Ex. P-1, Diary statement as well as in the Court as to the manner in which she was subjected to sexual assault by the appellant which has been duly corroborated by the evidence of her parents PW-02 Rajbhan (father of prosecutrix), PW-03 Munni Bai (mother of prosecutrix) as also the medical evidence available on record in the form of FSL Ex. P-20.
- 15) On the basis of aforesaid discussion, this Court is of the opinion that the prosecution has been successful in proving the guilt of the appellant beyond all reasonable doubt based on the evidence adduced by it. Being so, conviction of the appellant under 376 of IPC cannot be faulted with and is hereby affirmed.
- 16) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per report dated 06/07/2017 submitted by Jail Superintendent, Central Jail, Bilaspur, the appellant having completed the jail sentence of 7 years has been released from jail on 07/09/2010. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge