

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 908 OF 2014Judgment Reserved on 24/01/2020Judgment delivered on 19/05/2020

Surendra Verma S/o Kartik Ram Verma, aged about 41 years R/o Bajrang Ward Bhatapara, in the house of Hulash Sao, Civil and Revenue District Baloda Bazar Bhatapara, District Baloda Bazar-Bhatapara (C.G.)

....Appellant

Versus

State of Chhattisgarh: Through- Station House Officer, Police of Police station Bhatapara (City), District Baloda Bazar Bhatapara (C.G.)

...Respondent

For Appellant: Mr. Punit Ruparel and Mr. Ramnarayan Sahu, Advocates

For Respondent: Mr. Sushil Sahu, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV JUDGMENT

1. This appeal has been preferred against the judgment dated 22/07/2014 passed in Sessions Trial No. H-02/2014 by the Additional Sessions Judge, Bhatapara, District Balodabazaar (C.G.), whereby the Appellant has been convicted under Section 376 (2)(h) of the Indian Penal Code and sentenced to undergo RI for 10 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that the Prosecutrix (PW1) is a married lady. The Appellant is father-in-law of the Prosecutrix. The Prosecutrix was carrying pregnancy of about 33 weeks at the time of incident. On 05/11/2013, when

other family members of the Prosecutrix were not present in the house, the Appellant asked the Prosecutrix to talk with her mother and father on mobile phone. After talking with her parents, the Prosecutrix went inside his room to return his mobile phone that's when the Appellant dragged her into his room and committed forcible sexual intercourse with her. According to the prosecution, being father-in-law, the Appellant was well aware of the fact that the Prosecutrix is carrying pregnancy, inspite thereof he committed rape with her. After the incident, the Prosecutrix went to her maternal house by train and narrated whole incident to her parents. Thereafter, the matter was reported vide Ex.P-1. The Prosecutrix was medically examined by Dr. Anita Verma (PW6). Her report is Ex.P-9. For determination of pregnancy of the Prosecutrix, she was further examined by Dr. Sachitendra Mishra (PW9). His reports are Ex.P-19 & 20. According to sonography report of the Prosecutrix, she was carrying advanced stage pregnancy of 33 weeks. Statements of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 9 witnesses. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter. One defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant haVE submitted that

the Appellant has been wrongly convicted without there being any clinching evidence available on record. It has been submitted that the statement of the Prosecutrix is not reliable. There are material contradictions and omissions occurred in her statement. The conduct of the Prosecutrix is suspicious as she never narrated the incident to any of her neighbor and contrary to this she went to her parental house. From the evidence available on record, it is apparent that the relation of the Prosecutrix with the Appellant and his family members was not cordial, therefore, a false report has been lodged by her. It has been further submitted that the prosecution has failed to prove that at the time of incident, the Appellant was aware of the fact that the Prosecutrix was carrying pregnancy, therefore, offence under Section 376(2) (h) of the IPC is not proved against the Appellant. Reliance has been placed on the judgments passed by the Supreme Court in ***Criminal Appeal No. 1553/2019, Narra Peddi Raju v. State of A.P. Now State of Telangana*** and ***Appeal (crl.) No. 629/2006, Om Prakash v. State of U.P.***

5. Learned counsel appearing on behalf of the State opposes the argument advanced by the counsel for the Appellant and submits that there is sufficient evidence available on record to convict the Appellant, therefore, the conviction does not require any interference.
6. I have heard counsel for the parties and perused the record minutely.
7. There is no dispute on the point that the Appellant is father-in-law of the Prosecutrix and both were residing at Bhatapara along with other family members. According to the prosecution at the time of incident, the Prosecutrix was carrying pregnancy of 33 weeks. On this point, the

Prosecutrix was examined by Dr. Sachitendra Mishra (PW9) on 11/11/2013. According to sonography reports (Ex.P-19 & 20), the Prosecutrix was carrying pregnancy of about 33 weeks. The above statement of this witness has not been duly rebutted during his cross-examination. Thus, it is established that the Prosecutrix was carrying pregnancy of 33 weeks at the time of incident.

8. In para 7 of her examination-in-chief, the Prosecutrix (PW1) has categorically stated that due to pregnancy, her stomach had bulged and she went under medical examination for that. She also told this fact to the Appellant. In para 12, this witness has further stated that prior to one day of the incident, she intended to go to her maternal house on account of Bhaidooj, but the Appellant told her not to go as she was carrying pregnancy. Virtually this suggestion was made before the Prosecutrix by the defence himself. The above suggestion itself shows that the Appellant was well aware of the fact that the Prosecutrix was pregnant on the date of incident. Therefore, the argument advanced by the counsel for the Appellant that the Appellant was not knowing about the pregnancy of the Prosecutrix, is not acceptable. In the case of Om Prakash (Supra), the trial Court came to the conclusion that there was "full possibility" of the accused knowing that the Prosecutrix was pregnant. There is a gulf of difference between possibility and certainty. The evidence of the present case clearly shows that the Appellant was well aware of the fact that the Prosecutrix was carrying pregnancy. Thus, the facts of the present case is distinguishable with the case of Om Prakash (Supra).
9. With regard to the incident, the Prosecutrix (PW1) in her court statement

has deposed that on the date of incident at about 5:00 pm, she alone was present with the Appellant in the house. The Appellant called her to talk with her family members on mobile phone and when she went to give mobile phone that's when he caught her and committed forcible sexual intercourse with her. According to this witness as she was carrying advanced stage pregnancy, therefore, she could not resist heavily. After the incident, the Appellant also told her that if she will live with her, she will not have to face any problem. Thereafter, the Prosecutrix went to her maternal house in train and narrated the incident to her parents. Later on, report (Ex.P-1) was lodged by her. This witness has admitted the fact that the house where they were living was on first floor and the house owner was living on ground floor. Two other tenants were also residing on upper side along with them. She further admitted that she had never disclosed this fact to anyone. She further admitted that at the time of incident, she was crying, but no one came there.

10. Punaram (PW2), father of the Prosecutrix has supported the above statement of the Prosecutrix and has deposed that on the date of incident, the Prosecutrix came to his house and told about the rape committed with her by the Appellant. According to this witness on the next day, they went to the house of the Appellant and talked with him, but the Appellant started to quarrel with them. Thereafter, they made report in the police station. During cross-examination, this witness has admitted that there were some differences between the Prosecutrix and her husband and they used to quarrel.
11. From the above statements led by the Prosecutrix and her father Punaram

(PW2), it is established that on the date of incident, the Prosecutrix and the Appellant were only present in the house. According to the Prosecutrix, the Appellant called her in his room to talk with her family members on mobile phone and when she went to return the mobile phone, he committed forcible sexual intercourse with her. The Prosecutrix has remained firm during her cross-examination. Her statement is duly corroborated by her father, Punaram (PW2). Since at the time of incident, husband of the Prosecutrix and none of the other family members were present in the house, therefore, the act of the Prosecutrix that she did not disclose the fact of rape to her neighbour, and narrated the fact of rape to her parents, is natural because in the cases of rape where father-in-law is accused, the victim will always disclosed the fact of rape to her parental members nor to the neighbors. The Appellant is real father-in-law of the Prosecutrix. Though from the evidence it seems that there were some differences between the Prosecutrix and her husband, only this ground does not create any relevance that she is falsely implicating the Appellant.

12. Looking to the entire evidence available on record, in my considered view, the finding of the trial Court is in accordance with the evidence available on record and the said Court has rightly convicted the Appellant.
13. In the result, I do not find any merit in this appeal. The appeal is dismissed.
14. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

Sd/-
(Arvind Singh Chandel)

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Judge