

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 753 of 2013

Reserved on : 10.01.2020

Delivered on : 20.02.2020

1. Om Verma @ Chandrakar, S/o Lalaram Chandrakar, aged about 23 years.
2. Gulab Verma @ Chandrakar, S/o Balaram Chandrakar, aged about 22 years.

Both R/o Girra, P.S. Palari, District- Balodabazar-Bhatapara (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through: P.S. Balodabazar, District- Raipur (Now Balodabazar-Bhatapara) (C.G.)

---- Respondent

For Appellants : Mr. Hari Agrawal, Advocate.

For State/respondent : Mr. Raghvendra Verma, Govt. Advocate.

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 02.08.2013 passed by First Additional Session Judge, Balodabazar, Session Division- Raipur (C.G.) in Session Trial No. 31/2013, 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. 2000/- each with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on the date of incident i.e. intervening night of 25th to 26th

January, 2013, the prosecutrix had gone to Village- Girra in birth celebration of a newly born baby in her parental house. She received telephonic message regarding accident of her husband Laxminarayan. The prosecutrix left for Balodabazar at 7:30 in the evening. She kept waiting for bus to Balodabazar at Bus Stand- Girra, but no bus was available. At the same time, both the appellants came on motor-cycle and said to the prosecutrix that they would take her to Balodabazar. Since, the prosecutrix was acquainted to them, she agreed to come with them. They all left for Balodabazar at about 11:00 in night, but the appellants did not take her to her house and took her to another place near Purani Basti Pond and committed 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 FIR lodged in the present case is result of after thought and witnesses in the present case are interested witnesses.
- (ii) There is no eye-witness account to the incident and medical expert has not supported version of the prosecutrix.
- (iii) The trial court has overlooked the material contradiction and omission in statement of prosecution witnesses, therefore, finding of the trial court is not sustainable.
- (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 going to Balodabazar from Village- Girra and was staying for sometime at the Bus Stand where both the appellants came in motor-cycle and asked her to move with them. They took her to one field of old locality, removed her garments and thereafter, committed rape on her one by one. As per version of this witness, she informed the incident to her husband Laxminarayan and mother-in-law Savitri Verma. Version of this witness is unrebutted during cross-examination and it is supported by version of Laxminarayan (PW-2) and Savitri Verma (PW-8) to whom the incident was informed by the prosecutrix. Though Shatrughan Lal (PW-4) deposed that the incident has not been informed by the prosecutrix, but his version is insignificant because he is neither eye-witness account to the incident nor has been informed about the incident. Above named three witnesses have been subjected to searching cross-examination, but their version remained unrebutted.
6. Laxminarayan (PW-2) deposed before the trial court that appellant No. 1- Om Verma took key of his motor-cycle, but did not return thereafter.

Dr. Abhijeet Banerjee (PW-6) examined both the appellants and found them capable of intercourse. Version of the prosecutrix which is supported by other witnesses is inspiring confidence because there is nothing on record that the appellants have been roped in false charge. There is nothing on record that the prosecutrix has deposed falsely to implicate them of ravishing her chastity by sacrificing and jeopardizing her future prospect.

7. In the present case, date of incident is intervening night of 25th – 26th January, 2013 and report is lodged on next day i.e. on 26th January, 2013 as per Ex. P/1. In the said FIR, name of both the appellants is mentioned as culprit and their act is also mentioned in the said FIR. There is no delay in lodging the FIR, 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.
8. 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 their conviction is hereby affirmed.

Heard on the point of sentence.

9. 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.

10. The appellants are reported to be in jail, therefore, no order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun