

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 23-01-2020

Delivered on 20-02-2020

CRA No. 838 of 2015

- Ramvilas @ Guddu S/o Basant Rajwade aged about 26 Years R/o Village Salka, Police Station Bhatgaon, District Surajpur, Chhattisgarh,

---- Appellant

Versus

- State of Chhattisgarh S/o Through Station House Officer, Police Station- Jhilmili, District- Surajpur, Chhattisgarh.

---- Respondent

For Appellant : Mr. R.V. Rajwade, Advocate

For respondent/State : Mr. Dinesh Tiwari, Dy. Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 18-6-2015 passed by the First Additional Sessions Judge, Surajpur in Sessions Trial No. 74 of 2013 wherein the said Court has convicted the appellant for commission of offence under Sections 376 and 506 Part II of IPC, 1860 and sentenced him to undergo RI for seven years and fine of Rs.100/- and RI for one month and fine of Rs.100/- with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, on the date of incident i.e., on 7-1-2013 prosecutrix was going to village Kotaya with her aunt's daughter namely Ku. Kanti Rajwade on foot. When they reached near the bridge of village Taiya, appellant came from back, caught hold her and took her to field, made her lay down and committed forceful sexual intercourse with her without her consent and against her will. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The date of incident is 7-1-2013 but report was lodged after one day of the incident i.e., on 8-1-2013 at Police Station Jhilmili but no explanation was given for delay of one day, therefore, the story put-forth by the prosecution is cooked up.
- ii Version of prosecution is different from her earlier statement recorded under Section 161 of Cr.P.C and the statement of Kanti (PW/2) is also not reliable.
- lii) Medical expert has also not supported the version of prosecutrix, therefore, charge leveled against the appellant is not established.

- iv) The trial court has not evaluated the evidence in its true perspective, 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Prosecutrix (PW/1) deposed before the trial court that she was going to village Kataya with her sister on foot and when they reached near a canal of village Kataya, appellant took her to field, threatened her to kill, made her lay down and thereafter committed rape on her. Version of this witness is unrebutted during cross-examination. It is further supported by version of Kanti Rajwade (PW/2) who is eye-witness account to the incident and was going with the prosecutrix. This witness has also deposed before the trial court that the appellant committed rape on prosecutrix. Version of this witness is also unrebutted during cross examination. From the direct evidence of two eye-witnesses account, it is clearly established that the appellant committed rape

on prosecutrix and threatened her to kill. DW/1 Ganesh Singh deposed regarding some different incident. This witness is not witness of present incident, therefore, his version is not sufficient to rebut the evidence of two eye-witnesses adduced by the prosecution side.

7. 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, therefore, there is nothing on record to say that the appellant has been falsely roped in a false charge. There is no reason to disbelieve the testimony of two eye-witnesses account to the incident. It is true that there is delay of one day in lodging the report at Police Station. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. Only after giving it to a serious thought, report was lodged on the next day. The delay in a case of sexual assault, cannot be equated with the case involving other offences. It would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

8. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. When her evidence is

inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence against the appellant. that daughter of the prosecutrix.

9. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellant clearly falls within mischief of Section 376(1) and 506 Part II of IPC for which the trial Court has convicted the appellant and same is hereby affirmed. The trial Court awarded RI for seven years for offence under Section 376(1) of IPC which is minimum prescribed and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

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

Sd/-

(Ram Prasanna Sharma)

Judge

Raju