

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1832 of 2019

Uday Singh Gawade @ Udesingh S/o Late Dhansingh
Gawade Aged About 26 Years R/o Village Masbaras,
Bijmodpara, Antagarh, Police Station Antagarh District Kanker
Chhattisgarh. **---- Appellant**

Versus

State of Chhattisgarh Through Station House Officer Police
Station Antagarh District South Bastar Kanker Chhattisgarh.

---- Respondent

For appellant : Mr. Shailendra Kumar Sharma, Advocate

For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

13/01/2020

1. This appeal is preferred against the judgment dated 01.12.2018 passed by Additional Sessions Judge, Bhanupratappur, District- North Bastar Kanker (C.G.), in Sessions Trial No. 04/2018, wherein the said Court convicted the appellant for charge under Sections 450, 376(1) and 324 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 5 years and fine of Rs. 1000/-, R.I. for 10 years and fine of Rs. 1000/-, R.I. for 3 years and fine of Rs. 1000/- with default stipulations.
2. In the present case, prosecutrix is (PW-1). As per version of the prosecution on 17th of September, 2017 the prosecutrix made complaint that she was alone in her house at about 10.30 pm., this time appellant entered in her house and committed sexual intercourse with her and assaulted her.

Matter was reported, investigated, chargesheeted and convicted the appellant as mentioned above.

3. Learned counsel on behalf of appellants submits as under -

(I) Looking to the evidence, offence under Section 450 and 376(1) of IPC is not made out. The evidence regarding assault by the appellant is also contradictory in nature, therefore, charge under Section 324 of IPC is also not established.

(ii) This is a case of love affair between the prosecutrix and the appellant but the trial Court failed to appreciate the entire evidence. Therefore, finding of the trial Court is not proper and same is liable to be interfered with.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. Prosecutrix (PW-1) is not supported the version of the prosecution regarding commission of rape. As per version of this witness the appellant assaulted her that is why the report was made. This witness has been subjected leading questions but nothing is elicited in favour of the prosecution. Statement recorded under Section 161 Cr.P.C. can be used to contradict her evidence or in support of evidence made by the witness but statement recorded under Section 161 of Cr.P.C. is not

substantive piece of evidence and again this witness has not deposed in her cross examination that any sexual assault was done by the appellant against her. Looking to the entire evidence, assault on the part of the appellant is not established. Therefore, charge under Section 376(1) of IPC is not established.

6. Offence under Section 450 of IPC attracts only when anyone commits house trespass with intention to commit offence which is punishable for imprisonment of life but, since charge under Section 376(1) of IPC is not established, therefore, charge under Section 450 shall also not established.
7. Version of the prosecutrix is supported by Dr. Preeti Singh (PW-5) who examined the prosecutrix and noticed following injuries:-

(I) Round incised wound on both cheeks, measuring 3 cm. which was brown in colour and there was swelling on cheek and tooth bite was visible on right side of mandible.

(II) Incised wound on right arm and wound on left arm was blue in colour.

(III) Bruise on left side lower limb (leg) which was measuring 12x3 cm. and was blue in colour.

(IV) Incised wound on lower and internal part of left breast which was brown in colour.

(V) Incised wound on *labia majora* which was measuring 03 cm. of which upper portion appears to be brown in

colour and lower portion appears to be red in colour.

8. It is established that injuries sustained by the prosecutrix was caused by teeth bite. Though, the expert opined that injuries were grievous in nature but she is unable to state as to which was grievous injury. Injuries which falls within definition of Section 320 of IPC is the grievous hurt but from the evidence of medical expert, it is not established that injuries caused on the body of prosecutrix falls within grievous hurt as the injuries is not that kind of hurt, which is designated as grievous under Section 320 of IPC. The trial Court after evaluation of the evidence recorded finding that it is a case under Section 324 of IPC. After reassessing the evidence this Court has no reason to take contrary view. Conviction of the appellant for commission of offence under Section 324 of IPC is hereby affirmed.
9. Sentence awarded to the appellant for commission of offence under Section 450 and 376(1) of IPC is hereby set aside and he is acquitted of the said charges.
10. The appellant has suffered jail term from 19th of September, 2017 to 27th of September, 2017, from 20th November, 2018 to 1st December, 2018 and from 1st December 2018 to till date. Which comes out about one year and two months. The sentence awarded to the appellant for commission of offense under Section 324 of IPC is reduced to the period already undergone by him. However, fine amount imposed by the trial

Court shall remain intact. The appellant is in jail, he be set at liberty forthwith if not required in any other case.

11. Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle