

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 986 of 2008**

- Ramgopal @ Gopal, S/o. Basant Gandharv, Aged about 19 years, R/o. Village Andhiyaripara Limha, PS Ratanpur, District Bilaspur CG

---- Appellant

Versus

- State Of Chhattisgarh, Through the District Magistrate, Bilaspur

---- Respondent

For Appellant : Shri Ravindra Sharma, Advocate
For Respondent/State : Shri Ishwar Jaiswal, PL

Hon'ble Smt. Justice Rajani Dubey**Judgment On Board By Virtual Hearing****06/07/2021**

Present appeal is preferred against the judgment of conviction and order of sentence dated 28th August 2008 passed by the Sessions Judge, Bilaspur in S.T No. 137/2007 whereby the said Court has convicted the appellant for commission of the offence under Section 376 IPC and sentenced him to undergo RI for 7 years and to pay fine of Rs. 1,000/- with default stipulations.

2. Briefly stated, as per prosecution case, on 17.03.2007, at about 2.00 p.m. father of the prosecutrix asked her to look after the wheat sown in the field. It is the case of prosecution that at about 3.00 p.m. his daughter came home weeping and informed him that when she was in the field the appellant picked her up and slammed on the

ground, she shouted for help but he gagged her mouth and after removing her clothing, committed rape on her and fled away from the spot. He informed about the incident to the panchas of the village and also to the father of the appellant. Thereafter, FIR Ex.P-3 was lodged at police station Ratanpur against the appellant under Section 376 IPC. After investigation, the trial court convicted and sentenced him as mentioned above. After investigation, charge sheet was filed against him under Section 376 IPC.

3. In support of its case, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. One defence witness was examined by the accused to establish his defence.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits that there is no concrete evidence in respect of the commission of rape and the hymen of the prosecutrix was found intact. He submits that the doctor has not given clear opinion in respect of the commission of the offence. He further submits that the findings arrived at by the trial court are based on presumptions and surmises. He contends that in para 8 of the cross-examination of the doctor (PW-10) she has categorically stated that the redness and injury sustained by the prosecutrix could be caused by her

also. He submits that there are several contradictions and omissions in the statement of the prosecution witnesses which have been overlooked by the trial court. Counsel for the appellant strenuously contended that keeping in mind the medical report of the prosecutrix, reflecting her hymen was still intact, would be indicative of the fact that no intercourse was at all committed on her. According to him, the prosecutrix has not been able to state specifically about the penetration part.

6. On the other hand, counsel for the State supports the impugned judgment and submits that the finding of the trial court is based on proper appreciation of evidence and therefore is not liable to be interfered with.

7. Heard counsel for the parties and perused the material available on record.

8. In the present case, as per the version of prosecutrix, on the date of incident, when she was in her fields, the appellant came over there, caught her and slammed in the field. She has stated that after removing her clothing, tried to commit rape. On raising cries, one of the villager namely Suryakant (PW-2) reached there and on seeing him, the appellant fled away. There is nothing on record to say that the appellant has been falsely roped with the aforesaid charge. According to the prosecution case, the incident took place on 17.03.2007 and the report was also lodged on the same day. As per the report of the Radiologist (PW-11) Ex.P-16, age of the prosecutrix is said to be about 16 years and at the time of medical examination, she did not find any

mark of injury on her private part.

9. The statement of the prosecutrix seems quite natural and inspires confidence. In the present case, there is ample corroborative piece of evidence against the appellant. After going through the evidence, this Court finds no reason to say that the appellant has been falsely implicated in the case. There is no reason to disbelieve the evidence of the prosecutrix and other witnesses. Even the opinion of the doctor (PW-10) who has medically examined the prosecutrix has found redness and swelling on her private part and thus, the testimony of the prosecutrix inspires full confidence and the Sessions Judge after evaluating the evidence has rightly placed reliance on her testimony and therefore the findings recorded by the trial court is hereby affirmed. The appeal being devoid of merits is liable to be and is hereby dismissed.

10. As per the report of jail authorities, the appellant has suffered the full jail term and released from jail, therefore no further order for his arrest, etc. is required.

Sd/-

(Rajani Dubey)
Judge