(2019) 02 CHH CK 0057

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 560 Of 2012

Kamleshwar Sai Paikra		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: Feb. 7, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 376(2)(g)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Aditya Chopda, A.K. Prasad, Ravish Verma

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against the judgment of conviction and order of sentence dated 7-6-2012 passed by the Sessions Judge, Jashpur (CG) in

Sessions Trial No. 67 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 376(2)(g) of the IPC and

sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.5,000/- with default stipulations.

2. In the present case, prosecutrix is PW/7. As per prosecution case, on 10-5-2011 at about 1.30 pm appellant along with other two co-accused

persons namely Kamlesh Lohar and Nandu abducted the prosecutrix a girl aged about 12 years from village Chongribahar and present appellant

committed sexual intercourse with her against her will and without her consent. The matter was reported and investigated. After completion of trial,

the trial Court convicted and sentenced him as aforementioned. Rest of the other two co-accused persons being juvenile were referred to Juvenile

Justice Board, Jashpur (CG).

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

i) From the evidence of the prosecutrix, it has come on record that she had gone with appellant on her own and she had not stated anything to anybody

after the incident. Looking to material omissions and contradictions, her version is not reliable.

ii) Dr. R. Toppo (PW/5) who examined the prosecutrix deposed that hymen of prosecutrix was intact and no injury was found on her body, therefore,

medical expert has not supported the version of prosecution.

Iii) Prosecutrix has stated the story only to her uncle which creates doubt on her statement.

iv) Finding of the trial Court is not based on legally admissible evidence, therefore, same 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. PW/7 prosecutrix deposed before the trial Court that on the date of incident at night she was sitting in the varandah of one Mangal and asked one

Bhanjan to take her to her house, but he did not respond. At that time appellant and other two co-accused persons as mentioned above asked her that

they will take her to her house and while she was walking with them, the appellant pressed her mouth, took her towards well, undressed her and

inserted his penis into her vagina forcibly. Version of this witness is supported by version of PW/8 Prasann Ram to whom the story was narrated by

the prosecutrix. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence and their

version remained unshaken. Version of these witnesses is supported by version of FIR (Ex.P/14) which is lodged on the date of incident i.e., 10-5-

2011 in which name of the appellant along with other two co- accused persons is mentioned and their act of rape is also mentioned. Version of Dr.

Smt. R.Toppo (PW/5) is expert's opinion which cannot be equated with evidence of prosecutrix who is victim of the incident. The expert has to submit

the examination report of the victim and they cannot depose whether rape is committed on prosecutrix or not, therefore, version of medical evidence

that rape was not committed, is not acceptable. The incident can be decided on the basis of direct evidence and therefore, version of prosecutrix in

support of evidence of other witnesses established that rape is committed on prosecutrix, therefore, argument advanced on behalf of the appellant on

the count that it should be decided on the basis of evidence of medical expert, is not acceptable. The point remains to be seen is that if no injury was

found and hymen was found normal then whether it can be inferred that no rape is committed. It is not compulsory that hymen should be ruptured

after rape or injury should be found on the body of the victim. It is depend upon facts of each case and there cannot be universal rule. There is no

material contradiction in the statement of the prosecutrix and other witnesses and they deposed regarding rape on one voice. Minor contradictions

which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the

prosecution.

7. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of

India, 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. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no

corroboration is necessary,

8. Report was lodged on the same day of the incident, therefore, there is no delay in lodging the report. Where report of rape is to be lodged many

questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has

been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought,

must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot be

equated with the case involving other offences. 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. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe

to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

9. The trial Court has elaborately discussed the entire evidence and recorded finding that the appellant and other two co-accused persons in-

furtherance of common intention committed rape on prosecutrix and the appellant is the actual author of crime of rape. Looking to the evidence, it is

established that gang rape was committed on prosecutrix which is punishable under Section 376(2)(g) of the IPC.

10. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the

evidence of prosecutrix and other witnesses and this court has no reason to substitute a contrary finding. Gang rape is punishable under Section 376(2)

(g) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of gang rape under Section 376 (2)(g) of IPC which cannot be termed as harsh or unreasonable

or disproportionate. Sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further

order for his arrest etc., is required.