

(2019) 02 CHH CK 0062

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 758 Of 2010

Raju Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 7, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 363, 376(1)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Goutam Khetrapal, 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 9-4-2009 passed by the Special Judge, Durg District Durg

in Special case No. 52 of 2007 wherein the said Court has convicted the appellant for commission of offence under Sections 363 and 376 (1) of the

IPC and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.2000/- and RI for ten years and to pay fine of Rs.5000/-

, with default stipulations.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on the date of incident i.e., 12-1-2007, age of the prosecutrix is about 12 - 14

years and she was minor. It is alleged that present appellant kidnapped her from her lawful guardian-ship and took her in a house situated at Raipur

Naka where he 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) It is settled principles of law that for proving the age, prosecution must have produced documentary evidence, but in the present case there is no

clinching evidence available for proving the age of the prosecutrix.

ii Version of Bisahin Bai (PW/2) and prosecutrix (PW/1) is not reliable because there is material contradiction and exaggeration in their statements.

The other piece of evidence is also not supporting the case of prosecution.

Iii) The trial Court has recorded finding erroneously and 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/1 prosecutrix deposed before the trial Court that the appellant took her to the house for providing employment to her where he was working.

She further deposed that near the railway track, he committed rape on her. Version of this witness is supported by version of Pushpa Sahu(PW/4),

Suresh Sahu (P/5) and Haldar Kurre (PW/7 to whom the incident was narrated. All the witnesses have been subjected to searching cross examination

but remained unshaken.

7. In the present case, date of incident is 12-1-2007 and report was lodged on 15-1-2007 as per Ex.P./1 in which name of the appellant is mentioned as

culprit and his act of commission of rape is also mentioned in the said report. PW/3 Bhagwandas Satnami is father of the prosecutrix. As per version

of this witness, prosecutrix is aged about 13 - 14 years. Dr. A.K. Sahu (PW/6) who is Radiologist and examined the prosecutrix and after getting her

x-ray, made elaborate report and opined that her age is between 12 - 14 years. Version of this witness is unshaken during cross examination. From his

statement it is clearly established that the prosecutrix was aged about 14 years at the time of incident and she was minor. She was in custody of her

guardianship being minor and she cannot be taken from her guardianship without consent of her guardian. Looking to the entire evidence it is

established that the appellant took prosecutrix who was minor without consent of guardian-ship, therefore, offence under Section 363 of IPC is

established against the appellant. Version of this witness is also supported by FIR and again it is supported by version of Dr. A.K. Mishra (PW/6) who

examined the appellant and found him capable of intercourse. There is no material contradictions in the statement of the prosecutrix and other

witnesses. Looking to the entire evidence of prosecution and other witnesses and also the medical evidence, it is established that the prosecutrix was

subjected to rape by the appellant.

8. Looking to the entire evidence, statement of prosecutrix, appears to be 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,

9. True it is that there was delay of two days 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.

10. The trial Court has elaborately discussed the entire evidence and recorded finding that the appellant is the actual author of crime of rape. Looking

to the evidence, it is established that rape was committed on prosecutrix which is punishable under Section 376 (1) of the IPC.

11. 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. Rape is punishable under Section 376 (1) of

IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

12. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of rape under Section 376 (1) of IPC which cannot be termed as harsh or unreasonable or

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

13. 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.