

(2019) 02 CHH CK 0130

Chhattisgarh High Court

Case No: Criminal Appeal No. 688 Of 2009

Ram Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 11, 2019**Acts Referred:**

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

Hon'ble Judges: Ram Prasanna Sharma, J**Bench:** Single Bench**Advocate:** TK Tiwari, Shubha Shrivastava**Final Decision:** Dismissed

Judgement

Ram Prasanna Sharma, J

1. Shri Anand Pandey, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri TK Tiwari, Advocate

present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellant.

2. The appeal is directed against judgment dated 08.5.2009 passed by Additional Sessions Judge, Janjgir, Distt. Janjgir- Champa (CG) in Session Trial

No.200/2008 wherein the said Court convicted the appellant for commission of offence under Section 376(1) of the Indian Penal Code, 1860 and

sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 2000/- with default stipulation.

3. In the present case, prosecutrix is PW-13. As per the case of the prosecution, on 15.9.2008 at about 12.00 in the noon, the prosecutrix, a deaf and

dumb girl, was alone in her house situated at village Pipersathi. At that time the appellant entered into her house and committed forcible sexual intercourse with her without her consent and against her will. The prosecutrix informed the incident to her elder sister and thereafter her sister informed the incident to her parents. Report was lodged on the same day, the appellant was charge sheeted and convicted as mentioned above.

4. Learned counsel for appellant submits as under:

(i) The trial Court has failed to see that independent witnesses have not supported the version of the prosecution.

(ii) The trial Court has ignored the material contradictions and omissions in the statements of the prosecution witnesses and medical evidence is not a corroborating piece of evidence.

(iii) The trial Court also did not consider the fact that it may be a case of consent due to love affair. Therefore, finding arrived at by the trial Court is not liable to be sustained.

5. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record of the Court below.

7. Prosecutrix (PW-13) was examined with the help of Director, Deaf and Dumb School, Pamgarh namely Shri Teejram Jyoti. As per the version of

the prosecutrix, she is deaf and dumb and when she was alone in her house on the date of incident, the appellant entered into the house and committed

sexual intercourse with her without her consent and against her will. Version of this witness is subjected to searching cross-examination but nothing

could be elicited in favour of the defence. Version of this witness is supported by the version of Ram Krishna (PW-1), father of the victim, Manju

(PW-2), sister of the victim and Smt. Savitri (PW-3), mother of the victim, Chandra Shekhar Singh (PW-7) to whom the incident was informed and

thereafter the report was lodged. Version of direct evidence is supported by the version of Dr. CP Singh (PW-9) who examined the appellant at

Community Health Centre, Akaltara and found him capable to commit sexual intercourse.

8. Version of the prosecutrix is quite natural and inspires confidence. 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. In the present case report is lodged on the same day naming the appellant as culprit and his act of rape is also mentioned in the report (Ex-P/1),

which is a supportive piece of evidence. Even incase the report is lodged by lately, the same is not sufficient to discard the prosecution evidence.

10. 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.

11. There is no material contradiction in the statement of any witness. Minor contradictions are in significant for deciding the issues. There is no

reason to say the appellant has been falsely implicated. Again there is not reason to disbelieve the evidence of the prosecution and other witnesses

whom the story is informed just after the incident. Therefore, arguments advanced on behalf of the appellant is not sustainable. The trial Court

considered the entire evidence elaborately this Court has no reason to substitute a contrary finding.

12. Offence of rape is punishable under Section 376(1) of IPC for which the trial Court has convicted the appellant and same is not liable to be interfered with.

13. Heard on the point of sentence.

The trial Court awarded minimum sentence for the offence punishable under Section 376 (1) IPC and less than minimum cannot be awarded.

Therefore, sentence part is also not liable to be interfered with.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant has been released from jail

after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required

for his arrest.