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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

(2)

Cr.A.No.

1448

of 1998

CRIMINAL APPEAL UNDER SECTION 374 (2)

OF THE CODE OF CRIMINAL PROCEDURE, 1973

Appellant: Anil Gandhi, aged 24 years,  
Accused  
(In Jail) son of Laxmi Narayan Gandhi,  
resident of Nevra, P.S.Tilda,  
District Raipur, M.P.

versus

Respondent: The State of Madhya Pradesh

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No. 1448 of 1998**

Appellant : Anil Gandhi

VERSUS

Respondent : The State of Madhya Pradesh (now  
Chhattisgarh)

Criminal Appeal U/s. 374 (2) of the Criminal Procedure Code

**SB: Hon'ble Shri Goutam Bhaduri, J.**

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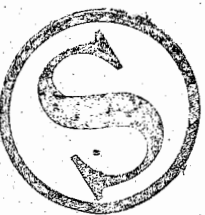
Present: Shri Ravi Bhagat, counsel for the appellant.  
Shri Neeraj Pradhan, PL for the State.

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**JUDGEMENT**  
**(1/01/2014)**

(1) This is an appeal against the judgment and order dated 30/06/1998 passed in Sessions Trial No.459/97 passed by the Sessions Judge, Raipur whereby the appellant has been convicted under Section 376 of IPC and has been sentenced to undergo 7 years RI.

(2) The brief facts of the prosecution case is that the prosecutrix aged about 15 years was working as house hold helper in the house of the accused prior to 1-1¼ years from 12/07/1997. One day when the prosecutrix was washing the cloths, at that time the accused Anil, despite the resistance by the prosecutrix had committed rape upon her and paid her Rs.10/-. Subsequently, on each occasion the accused used to commit rape on prosecutrix and used to pay her Rs.10/- every time whereby the prosecutrix became pregnant. On 12/07/1997 the prosecutrix was aborted and still child was born. Being so, when the matter was enquired, at that time the prosecutrix had disclosed that



the child was born from the accused. Since at that time the prosecutrix was unmarried, as such one Malik Ram had reported the matter to the Police Station, Nevra and merg was registered. After the merg, FIR was also registered and the post mortem of the dead body of the child was done. Subsequently, the prosecutrix was also subjected to examination and thereafter she disclosed that the accused had committed rape number of times on her thereby she became pregnant. In order to ascertain the date of age of the prosecutrix, the admission register was also seized from the school and subsequently after investigation the charge sheet was filed. The learned court below after evaluating the evidence on record came to a conclusion that the accused had committed rape on the prosecutrix and thereby had convicted under Section 376 IPC and sentenced him accordingly. Hence, this appeal.

(3) I have heard learned counsel for the parties at length and perused the documents as also statement on record. The prosecutrix in this case has been examined as PW-2. She has turned hostile. She has not supported the case of the prosecution. In her examination in chief she had attributed the commission of offence to one Munna and has stated that the accused has not committed anything with her. She was declared hostile. However, in the cross examination she has stated that she had made report to the police that she became pregnant through the accused. In the cross examination the prosecutrix has stated that one Munna had promised her to marry but then she was left and thereafter one dead child was born which was from side of Munna. Thereafter, she has stated that she was working in the house of accused. She in cross examination has stated that she



has disclosed name of Munna to the police and had disclosed the fact that she became pregnant through him only. She has further stated that she was threatened by the police if she does not take name of Anil then she will be inculpated in a false case. Even to the statement made to the Magistrate under Section 164 Cr.P.C. she had stated that while the statement was recorded the police personnel were also present there and prosecutrix was forced to attribute offence to this appellant.

(4) The mother of the prosecutrix is examined as PW-1. She is also a hear say witness of prosecution. She has stated that her daughter had disclosed that she was made pregnant through this accused Anil. The prosecutrix was subjected to radiological test and the doctor was examined as PW-5. Doctor had stated that he had examined the prosecutrix and taken out the X-ray which was marked as Ex.P-5 and Ex.P-6 and had given a report which was marked as Ex.P-7. The doctor has opined that according to the X-ray the age of the prosecutrix on the date of examination was found to be 18 to 19 years. He has further stated that age of the prosecutrix may vary from three years on either side according to the medical jurisprudence.

(5) The prosecution in order to prove the age of the prosecutrix, had examined one PW-9, Shatrughandas Vaishnav, who was Head Master of school. He has stated that according to the entry register of the school, the date of birth of the prosecutrix was shown to be 15/05/1983. He has proved copy of the date of birth register as Ex.P-14. He has also proved the entry register of the school wherein the date of birth of the prosecutrix is also shown as 15/05/83 which is proved as Ex.P-15-A. In the cross examination, this witness has stated

the prosecutrix was admitted by the local guardian and according to discloser the date of birth was recorded. He has further stated that while the entry was made he was not posted in the school and thereby it is substantiated that he was not author of the same.

(6) In the case in hand, the only reasonable plausible explanation comes out is with respect to the age that of the doctor PW-9. He has stated that on the date of examination the age of the prosecutrix was found to be 18 to 19 years according to the fusion of bones. The witness has further stated that the margin of three years on either side is acceptable under medical examination. Therefore considering statement of the witness, the age of the prosecutrix on the date appears to be 18 years or more and she cannot be termed as minor on the date. Now considering the statement of the prosecutrix that she has turned hostile and has not supported the case of the prosecution, instead has clamped allegation on one Munna who is not accused in this case, I am of the opinion that in absence of any such other corroborative or any other evidence, this cannot be held that the accused had committed forceful rape on the prosecutrix. Therefore, after close scrutiny of the entire case in hand and examination of the evidence, I am of the opinion that the learned court below has committed an illegality in convicting the accused and therefore this cannot be sustained. Accordingly, the impugned judgment of conviction and order of sentence is set aside.

(7) In the result, the appeal is allowed. It is stated that the appellant is on bail. His bail bonds shall continue for a period of six months from today.

Sd/-  
Goutam Bhaduri  
Judge

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