

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2607 of 1998**

- Dheeran Sai Lakra, s/o Maheshram, aged 22 years, village Kireeya, Police Station Dharamjaigarh, Dist. Raigarh.

---- Appellant**Versus**

- The State of M.P. (now State of Chhattisgarh), through Police Station, Dharamjaigarh, Dist. Raigarh.

---- Respondent

For appellant	:	Mr. R.K.Jain, counsel for the appellant.
For Respondent/State	:	Mr. Mahesh Mishra, P.L. for the State.

Hon'ble Shri Justice Inder Singh Uboweja**C A V Judgment****Pronounced on 10/07/2015**

By this appeal, the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 21.09.1998 passed in Sessions Trial No. 129/1996 by the First Additional Sessions Judge, Raigarh, whereby and whereunder after holding the appellant guilty for commission of offence under Section 376 (1) of the I.P.C., the Court below sentenced the appellant to undergo rigorous imprisonment for 7 years.

2. As per case of the prosecution, on 18.01.1996 at about 6.00 pm, the prosecutrix (P.W.13) went to a field in search of buffalo. At that moment, the accused/appellant came there and asked for physical relation, which she refused. Then the appellant caught her hold and gagged her mouth with *lungi*, after overthrowing her to ground used overpower and committed rape. On hearing cries of the prosecutrix, her father Jagsai came there and assaulted accused by club. On seeing this, accused fled from the spot. Report was lodged at Police Station,

Dharamjaigarh.

3. During the course of investigation, prosecutrix was sent to Government Hospital, Dharamjaigarh, for medical examination and thereafter for ossification test, reports of which were exhibited as Ex.P.2 and P.9 respectively. Vaginal swab slide, underwear of victim and sample of semen were seized and seizure memo was prepared vide Ex.P.3. Seized articles were sent for chemical examination to F.S.L., report of which was received. Accused was arrested and sent for medical examination to Dr. P.L.Bodalkar, whose report is Ex.P.6. Kotwari register was sealed and seized vide Ex.P.4.

4. Statements of witnesses under Section 161 of the Cr.P.C. were recorded. After completion of investigation, finally charge sheet was filed before the Court of Judicial Magistrate First Class, Dharamjaigarh, who committed the case to the Court of Sessions Judge, Raigarh, from where, learned Additional Sessions Judge received the case on transfer for its trial.

5. In order to prove the guilt of the accused, prosecution has examined as many as 15 witnesses. Accused was examined under Section 313 of the Code in which he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed.

6. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.

7. I have heard the learned counsel for the parties and perused the record of trial Court and the judgment impugned.

8. Mr. Rajesh Jain, learned counsel for the appellant, vehemently argued that prosecution has failed to prove that on the date of incident the prosecutrix was a minor girl. Evidence of prosecutrix (P.W.13) and Tejram (P.W.9), Shobhit (P.W.10) does not inspire confidence and trustworthy. Medical evidence also did not support

the prosecution story. In absence of such cogent and clinching evidence, the appellant's conviction and sentence is not sustainable in law.

9. On the other hand, Mr. Mahesh Mishra, learned counsel for the State opposed the appeal and submitted that the prosecution has established its case beyond reasonable doubt and proved the appellant's guilty for commission of offence of rape.

10. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution. In the present case, for the purpose of proving the age of prosecutrix, investigating officer Lalaram (P.W.14) seized Kotawari register, which was not produced and proved before the Court. Prosecution has proved ossification report by the evidence of Dr.S.N.Nandan, according to him, age of the prosecutrix, on examination day, was between 15 to 18 years. Therefore, it cannot be ruled out that age of the prosecutrix may be 20 years on the date of incident because two years margin could be taken from the ossification report. Thus, prosecution has failed to prove that on the date of incident prosecutrix was a minor girl.

11. Prosecutrix (P.W.13) stated that she went towards Lohra Tikra in search of her buffalo, at that time, accused/appellant came there and started holding her, which she refused, upon which, he forcibly overthrown her to ground and opened his *lungi* and her saree, penetrated his organ into her private part, whereupon she raised hue and cry. Upon hearing her cries, Tejram (P.W.9), and Shobhit (P.W.10) rushed there and when they asked as to what was he doing, then appellant left her and fled away from the spot after leaving his *lungi* and blanket. In cross-examination, she has denied the contents mentioned in F.I.R. at "B to B" portion wherein she has mentioned that her father came there and assaulted the accused by a club. Prosecution witness Ghasiram (P.W.12), Head Constable, has stated that F.I.R. (Ex.P.8) is written according to prosecutrix statement. Therefore, it is clear that prosecutrix changed her

version. In Court evidence, she has also not stated as to what was stated in F.I.R. (Ex.P.8) wherein it has been mentioned by her that when she raised hue and cry Tejam (P.W.9) and Shobhit (P.W.10) came there and accused fled away before their face.

12. Prosecution has not seized any *lungi* and blanket left by the appellant on the spot, which shows that prosecutrix has adduced false evidence before the Court below. She has not reported that accused left the *lungi* and blanket on the spot. Father of the prosecutrix, namely, Jagsai has not been examined by the prosecution nor has given any clarification about the non-examination of Jagsai. Therefore, it is fatal to the prosecution story.

13. Tejam (P.W.9) has stated that after hearing sounds of prosecutrix, he reached the spot where he saw that accused was in compromise position with the prosecutrix. In cross-examination, he stated that he did not give any statement (Ex.D.1) to the effect that the prosecutrix came and narrated him that accused has committed rape with her whereas Investigating Officer Lalaram (P.W.14) has clearly stated that such statement has been given by Tejam. Therefore, by F.I.R. (Ex.P.8) and Ex.D.1, it is clear that this witness has falsified the story and the evidence adduced before the Court below is not reliable.

14. Shobhit (P.W.10) has stated that after hearing cries of the prosecutrix, he rushed the spot whereas F.I.R. (Ex.P.8) clearly reveals that this witness did neither reach the spot at the time of incident nor thereafter. Therefore, evidence of this witness being not reliable is discarded.

15. Dr. S.Ekka (P.W.2) has stated that she has examined the prosecutrix on 25.01.1996. Her report shows that she has not seen any sign of recent intercourse or rape. She proved her report Ex.P.2. F.S.L. report (non-exhibited) also did not support

the prosecution story because no positive symptoms were seen in sending articles.

16. Perusal of entire evidence adduced clearly goes to show that prosecution has failed to prove the fact that the prosecutrix was below the age of 18 years on the date of incident. Prosecution has also failed to prove that the appellant has committed rape on prosecutrix. Therefore, it is proved that the appellant has committed the offence punishable under Section 376 of the I.P.C.

17. In the result, the appeal filed by the appellant is allowed. Conviction and sentence imposed on him by the trial Court, being not sustainable in law, is hereby set aside. He is acquitted of the charge under Section 376 (1) of the I.P.C.

18. Appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
Judge