

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.727 of 2012

Ramadhar, S/o Bharat Yadu, aged about 37 years, R/o Village Labharakala, Thana Mahasamund, Distt. Mahasamund (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through P.S. Mahasamund, Distt. Mahasamund (C.G.)

---- Respondent

For Appellant: Mr. Adil Minhaj, Advocate.

For State/Respondent: Mr. Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

JUDGMENT

18/03/2015

T.P. Sharma, J: -

1. Mr. Adil Minhaj, Advocate, is appointed to represent the accused in custody.
2. Challenge in this appeal is to the judgment of conviction & order of sentence dated 22-12-2005 passed by the 2nd Additional Sessions Judge, Mahasamund, in Sessions Trial No.321/2005, whereby the trial Court has convicted the appellant for committing threat to his minor daughter and committing rape upon her, under Section 376 of the IPC and sentenced him to undergo imprisonment of life & pay fine of Rs.10,000/-, in default of payment of fine to further undergo RI for two years.
3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
4. As per case of the prosecution, unfortunate prosecutrix (PW-1) (name not mentioned) – daughter of the appellant, was residing with the appellant and her mother Sati Bai (PW-2). On 11-8-2005 at about 12 noon, the appellant came to his house where only the prosecutrix was present. He removed her clothes and committed sexual intercourse with her. At that time, her age was only 12 years. By committing sexual intercourse, the appellant has caused injury upon private part of the prosecutrix. After committing

sexual intercourse, the appellant went to pond for bath. The prosecutrix went to Rambati & Durga and informed the incident. They also noticed bleeding from her private part. Her mother was not present. When she came, she informed the incident to her. After committing the offence, the appellant fled away from the house. He came on second day. Panchayat meeting was convened where the appellant has admitted his guilt. Thereafter, the prosecutrix went to Police Station Mahasamund and lodged FIR vide Ex.P-1. Spot map was prepared vide Ex.P-2. Her undergarments were seized vide Ex.P-4. She was sent for medical examination. Dr. Alka Pardal (PW-7) examined her vide Ex.P-5A and found following injuries and symptoms: -

- Body was feverish.
 - Her age was 12 years.
 - She was complaining pain on private part.
 - Labia majora and labia minora swollen.
 - Hymen torn, margins are swollen.
 - Pubic hair absent.
 - At the time of conducting internal examination i.e. per vagina with little finger, it was painful and excessive bleeding was present.
 - Two slides of vaginal smear were taken, sealed and handed-over to the Constable.
 - She was subjected to sexual intercourse within a week.
5. Undergarments of the appellant were also seized vide Ex.P-3. He was examined by Dr. Ghanshyam Chandrakar (PW-8) vide Ex.P-8A and found that he was capable to commit sexual intercourse. Sealed articles were sent for chemical examination to the FSL vide Ex.P-10. Statements of the witnesses were recorded under Section 161 of the CrPC.
 6. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Mahasamund, who committed the case to the Court of Sessions, Raipur, from where learned 2nd Additional Sessions Judge, Mahasamund, received the case on transfer for trial.
 7. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eight witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
 8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
 9. We have heard learned counsel for the parties, perused the judgment and

records of the Courts below.

10. Learned counsel for the appellant vehemently argued that evidence of the prosecutrix (PW-1) and Dr. Alka Pardal (PW-7) reveal that the prosecutrix, aged about 12 years, was subjected to sexual intercourse on 11-8-2005 but she has lodged FIR on 15-8-2005 i.e. after four days of incident. As per Ex.P-1, FIR, after commission of offence, the appellant had left the house and after leaving house by the appellant, there was no fear upon the prosecutrix, therefore, FIR would have been lodged on 11-8-2005 or on second day, but it has been lodged after four days. Explanation has been offered that on second day, Panchayat meeting was convened, but even after Panchayat meeting, FIR has not been lodged promptly which shows that the prosecutrix was subjected to sexual intercourse but only with a view to fastening liability upon the appellant, the appellant has been falsely implicated. The prosecutrix is minor daughter of the appellant. Normally, it was not possible to commit sexual intercourse or rape with his own daughter that too aged about 12 years. Conviction of the appellant is based on conjectures and surmises. Evidence of of the prosecutrix does not inspire confidence and is not trustworthy. Therefore, the appellant is entitled for acquittal.
11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of the prosecutrix (PW-1), Sati Bai (PW-2) – mother of the prosecutrix and Dr. Alka Pardal (PW-7) are sufficient for proving the guilt of the appellant.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. As per evidence of the prosecutrix (PW-1), she has specifically deposed that she was subjected to sexual intercourse and her age is 12 years. As per evidence of Dr. Alka Pardal (PW-7), she noticed multiples injuries upon private part of the prosecutrix and she has opined that the prosecutrix was subjected to sexual intercourse within seven days of her examination.
14. The prosecutrix was subjected to sexual intercourse. At the time of incident, whether the appellant has committed sexual intercourse / rape with the prosecutrix is the only question remains for consideration.
15. The prosecutrix (PW-1) has specifically deposed in her evidence that the appellant has committed rape with her which finds corroboration from FIR Ex.P-1 and evidence of Sati Bai (PW-2) – mother of the prosecutrix.
16. The appellant is father of the prosecutrix. Rape / sexual intercourse by father with his own minor daughter is normally not natural, but false

allegation against her father with whom the minor is residing since birth and false allegation against her husband with whom the wife is residing are also not natural. Evidence of the prosecutrix (PW-1) and Sati Bai (PW-2) show that the appellant was the person who has committed sexual intercourse with his minor girl and caused injury upon private part of the minor. Their evidence inspire confidence and are trustworthy.

17. After appreciating the evidence of the prosecutrix and medical evidence, the trial Court has convicted and sentenced the appellant in the aforesaid manner.
18. Considering the act attributed to the appellant i.e. commission of rape with own minor daughter and evidence of the prosecutrix, we do not find any illegality or infirmity in the judgment impugned or we do not find any ground for taking lenient view in sentencing the appellant.
19. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE

Soma