

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 270 of 2012**

- Rameshwar Prasad Banjare S/o Kartik Ram Banjare, aged 21 years, R/o. Semariya , P.S. Kota , Distt. Bilaspur C.G.

---- Appellant**Versus**

- State of Chhattisgarh Through – Station House Officer, Police Station Kota, Distt. Bilaspur (CG)

---- Respondent

For appellant : Mr. Avinash Mishra, Adv. with Mr. Rajnish Shrivastava, Adv.
For Respondent/State : Mr. Avinash K. Mishra, PL for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai**JUDGMENT****07/05/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 4-1-2012 passed by the Sessions Judge, Bilaspur in S.T. No. 202/2010 whereby and whereunder, learned trial Court after holding the appellant guilty for committing rape with the prosecutrix P.W. 1 (name not mentioned) after committing house trespass in order to commit offence of rape, convicted him under Sections 450 and 376 of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo R.I. for 3 years with fine of Rs. 500/- in default of payment of fine to undergo SI for 3 months, R.I. for 7 years with a fine of Rs. 1,000/-, in default of payment of fine to further undergo SI for 6 months respectively. Both the sentences are directed to run concurrently.
2. Conviction is impugned on the ground that without there being any iota of evidence, learned trial Court convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 30-8-2010 at about 1.30 pm, the appellant committed house trespass and also forcibly committed rape

against will and consent of the prosecutrix P.W. 1 who informed the incident when her parents returned from the field. Same day she along with her parents reached to Police Station Kota, lodged FIR Ex. P-1. Kota police registered offence at Crime No. 352/2010 against the appellant and started investigation. During investigation, prosecutrix was examined by P.W. 5 Dr. Ms. Nikita Kanwar. She gave her report Ex. P-12. Appellant was arrested. He was medically examined by P.W. 4 Dr. Kamlesh Kumar. As per his report, he was capable of committing intercourse. Police prepared spot map, seized undergarments and certificate regarding age of prosecutrix. Statement of the witnesses under Section 161 of the Code of Criminal Procedure (in brevity 'Cr. P. C.') was recorded. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Kota who in turn committed the case to the Court of Session, Bilaspur. Learned Sessions Judge framed charges against the appellant for offence under Sections 450 and 376 of the IPC. Appellant denied the charges and prayed for trial. During trial prosecution examined 7 witnesses in all to prove the guilt of the appellant. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges, pleaded innocence and false implication in the crime in question. Appellant also examined one defence witness as D.W. 1 Saligram as per whom his house is near to the house of the prosecutrix and he had not heard any call from the house of the prosecutrix.

4. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as above-mentioned.
5. I have heard learned counsel for both the parties and perused the record of the trial Court including the impugned judgment.
6. Learned counsel for the appellant submits that as instructed he is not assailing the judgment on its merit. He is confining his argument only on the quantum of sentence for which, he submitted that the appellant was at the

time of incident aged 21 years. He was the first offender and is in jail since 28-9-2010 till date, thereby he has served sentence for 4 years, 7 months and 9 days. He will not commit any offence in future. He be given an opportunity to live as law abiding citizen in the society. The incident was committed on 30-10-2010 i.e. prior to Criminal Law Amendment Act, 2013 with effect from 3-2-2013. As per provisions, prior to amendment the court may for adequate and special reason to be recorded in the judgment, impose a sentence of imprisonment for a term lesser than 7 years under Section 376(1) of IPC. Learned counsel further submitted that looking to the age and other facts and as there is no criminal history of the appellant prior to this incident, he may be sentenced to the period already undergone.

7. On the other hand, learned counsel appearing for the State opposed the arguments of the learned counsel for the appellant and argued that the appellant was of the age of 21 years but the prosecutrix was also aged 18-19 years at the time of incident. Though she was major but as she was handicapped hence had less resistance power in comparison to others. The trial Court after appreciation of the entire facts duly convicted and sentenced the appellant. Hence there is no scope for any interference in the impugned judgment. The appeal may be dismissed.
8. In order to appreciate the arguments advanced by learned counsel for respective parties, I have perused the material available on record.
9. As the appellant is not contesting this appeal on conviction under Section 450 and 376 of the IPC and also on the basis perusal of evidence adduced by the prosecution, I do not see any illegality or impropriety in the judgment of conviction of the appellant and the same is affirmed.
10. So far as quantum of sentence is concerned, looking to the facts that the appellant was 21 years of age at the time of incident, no criminal history is shown in the charge sheet, the appellant has been in jail for 4 years, 7

months and 9 days, I am of the view that an opportunity should be given to the appellant to live in the society as law abiding citizen.

11. On due consideration as the proviso prior to amendment gives an authority to this Court to sentence less than the minimum sentence, I am of the view that it is a fit case where less sentence than minimum should be given to the appellant particularly when both the sentences are directed to run concurrently.
12. Consequently, the appeal is allowed in part. Conviction of the appellant under Sections 450 and 376 of IPC is affirmed. Fine sentence is also maintained. Sentence of 3 years under Section 450, IPC is also affirmed. However instead of the substantive jail sentence of 7 years awarded by the trial Court under Section 376, IPC, the appellant is sentenced to the period already undergone by him.
13. The appellant is in jail. He be released forthwith if not required in any other case.

Sd/
Chandra Bhushan Bajpai
Judge