

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 740 of 2011**

- Jitendra Kumar Sahu, aged about 21 years S/o Dilip Kumar Sahu, R/o Village Mokha, P.S.-Bhakhara, Distt.-Dhamtari, CG.

---- Appellant**Versus**

- State Of Chhattisgarh, through Police Station Bhakhara, Distt. Dhamtari, CG

---- Respondent

For appellant

: Mr. N.S. Dhurandhar, Adv.

For Respondent/State

: Mr. Sumit Jhanwar, Panel Lawyer.

Judgment**26/08/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26-8-2011 passed by the Sessions Judge, Dhamtari CG in Sessions Case No. 2/2011 whereby and whereunder learned Sessions Judge after holding the appellant guilty for kidnapping the prosecutrix P.W. 4 (name not mentioned) with an intent to compel her for illicit intercourse and taking to his house without any permission from lawful guardian and committing rape against will and consent of the prosecutrix, convicted him under Sections 363, 366, 376 and 506-B of the Indian Penal Code (in brevity 'IPC') and sentenced him to undergo RI for 3 years, 3 years, 10 years and 2 years, with fine of Rs. 2,000/-, 2,000/-, 5,000/- 1,000/-, in default of payment of fine to further undergo RI for 6 months, 6 months, 1 year and 3 months respectively with a direction that all the substantive jail sentences shall run concurrently.
2. Conviction is impugned on the ground that without there being any iota of evidence, learned trial Court has convicted and sentenced the appellant and thereby committed illegality.
3. As per case of the prosecution, on 9-9-2010 at about 2.00 pm, when prosecutrix P.W. 4 was outside of her house, the appellant came, took her to his house and after removing her clothes committed rape against her will and consent. Thereafter the matter came to the knowledge of family members of the prosecutrix. Father of the prosecutrix P.W. 6 Dhruv Kumar Sahu lodged First Information Report Ex. P-8. Police Bhakhara registered the offence as Crime No. 158/2010 and started investigation. With consent

of the guardian and other permission, prosecutrix was sent for medical examination. Dr. Sandhya Chatterji examined the prosecutrix and after examination noticed sexual intercourse along with redness and pain in the private part. She gave her report vide Ex. P-13. Since Dr. Sandhya Chatterji was not available in India, P.W. 11 Dr. Seema Singh was examined for medical evidence. Police prepared sport map. Appellant was arrested. He was sent for medical examination. P.W. 8 Dr. Vijay Phulmali after examination opined that the appellant is capable to commit intercourse. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.'). Vaginal slides and other articles after clinical examination were sent for chemical examination. After completion of investigation and receipt of FSL report, charge sheet was filed before the Judicial Magistrate First Class, Kurud who in turn committed the case to the court of Session. Dhamtari. Learned Sessions Judge framed charges against the appellant. The appellant denied the charges.

4. In order to prove the guilt of the appellant, prosecution examined 11 witnesses in all. The accused was examined under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.
5. D.W. 1 Premlal Dewangan was already examined as P.W 3. Thereafter he was also examined as D.W. 1 on behalf of the appellant.
6. The trial Court after providing opportunity of hearing to the parties, convicted and sentenced the appellant as aforementioned.
7. I have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Learned counsel for the appellant fairly submits that he is not contesting the appeal against judgment of conviction passed against the appellant. He is confining his argument only on the quantum of sentence. He submitted that the appellant was a young boy of 22 years at the time of incident. He was first offender without any previous criminal antecedent. He is in jail since 14-9-2010 till date. He submitted that the date of incident is 9-9-2010 i.e. prior to Criminal Law (Amendment) Act, 2013 which came into force with effect from 3-2-2013 which provides that the court may for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. The offence squarely falls under the category of proviso to Section 376 sub-section (2)(f) of the

IPC, though the trial Court has not specifically mentioned under which provision of Section 376 of IPC the appellant is convicted and sentenced. Learned counsel for the appellant further submitted that looking to the entire facts and circumstances of the case, minimum sentence of RI for 7 years may be imposed upon the appellant. He be given opportunity to live in the society peacefully. He will not commit any offence in future.

9. On the other hand, learned counsel for the respondent/State opposed the arguments advanced on behalf of the appellant and submitted that though the appellant was first offender and a boy of 21 years of age but he took the prosecutrix aged 9 years with him and committed rape with her against her will and consent. He also gave threat to the prosecutrix for not telling the incident to anybody. Looking to the facts and circumstances of the case, the trial Court has rightly sentenced the appellant RI for 10 years as applicable in the matter prior to Amendment Act of 2013. He submitted that the appellant does not deserve for any leniency and the appeal deserves to be dismissed on both the counts.
10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties before the trial Court.
11. Learned counsel for the appellant is not contesting the appeal on conviction of the appellant. Even otherwise, from perusal of the entire evidence, in the considered opinion of this Court, the trial Court has not committed any illegality or impropriety while convicting the appellant for offence under Sections 363, 366, 376 and 506-B of the IPC. Hence conviction part of the judgment does not require any interference and the same is maintained.
12. As regards fine sentence awarded to the appellant, in total Rs. 10,000/- in all four counts has been imposed which cannot be said to be on higher side looking to the facts and circumstances of the case. Hence the fine sentence imposed by the trial Court is also maintained in all counts.
13. As regards quantum of substantive jail sentence for offence under Sections 363, 366 and 506-B of IPC, no prayer for reduction of substantive jail sentences for above three counts is made. Even otherwise, the sentences awarded for above three counts are appropriate and do not require any interference. Hence same is maintained.
14. So far as quantum of substantive jail sentence for offence under Section 376 of IPC is concerned, the trial Court awarded R.I. for 10 years. Learned counsel for the appellant prays for minimum sentence as provided for the offence under Section 376(2)(f) of the IPC with a submission that the

appellant was first offender with no criminal previous history, he was a young boy of about 21 years at the time of incident. He be given an opportunity. Though prior to Criminal Law (Amendment) Act with effect from 3-2-2013, there was provision under Section 376 (2)(f) of the IPC for minimum sentence of 10 years but the Legislature provided that the Court may for adequate reason to be mentioned in the judgment impose sentence of either description for a term of less than ten years. On appreciation whether any lesser sentence be awarded or not, in the opinion of this court looking to the fact that he was aged 21 year at the time of incident, he was first offender with no criminal past and prays for opportunity to live in the society peacefully, it would be proper to award less than minimum sentence as provided for the offence under Section 376(2)(f) of IPC.

15. Consequently, the appeal filed by the appellant is allowed in part. Judgment of conviction passed against the appellant and the fine sentence imposed upon the him for all the four offences are hereby affirmed and maintained. Substantive jail sentences passed against the appellant under Sections 363, 366 and 506-B of IPC are also maintained. However, the sentence under Section 376 sub-section (1)(f) of the IPC is modified and instead of RI for 10 years, the appellant is convicted to undergo RI for 7 years.
16. The trial Court and other concerned authorities are directed to get served the appellant jail sentence of RI for 7 years. The appellant shall be entitled to get benefit of set off and remission if any. If fine sentence is not paid, the the trial Court is directed to get served the appellant sentences under default clause till realization.

Sd/-

Chandra Bhushan Bajpai
Judge