

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 661 of 2008**

- Bisad Khan, age-58 years, S/o Gaffur Khan, By Profession : Labour, R/o village Korguda, P.S. Balod, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through the Police Station Balod, District Durg

---- Respondent

For Appellant.	-	Shri J.A. Lohani, Advocate.
For Respondent	-	Shri Arvind Dubey, Panel Lawyer.

Hon'bel Shri Justice Pritinker Diwaker**Judgment On Board****28/03/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 26.04.2008 passed by the Additional Sessions Judge, Balod, District Durg, in S.T. No.02/2008 convicting the accused/appellant under Section 376 (2) (f) read with section 511 of IPC & sentencing him to undergo R.I. for five years and pay fine of Rs.2000/-, in default of payment of fine amount to further undergo additional R.I. for one year.

02. Brief facts of the case are that on 25.10.2007 FIR (Ex.P/1) was lodged by Lagni Bai (PW/1)-grand-mother of prosecutrix alleging in it that on 24.10.2007 her son along with his wife had gone for their livelihood leaving behind the prosecutrix (PW/3) aged about 4 years. It is alleged that on 24.10.2007 the accused/appellant had taken prosecutrix along with him offering chocolate and when she returned

home at about 6.30 pm crying and complained of pain in her private part, on being repeatedly asked, she disclosed the incident that the accused/appellant had taken her near transformer, lay her down, removed her undergarment and inserted his finger in her private part, thereafter, the accused/appellant removed his own clothes including that of underwear and tried to insert his penis in her private part and attempt was made to commit sexual intercourse with her as a result of which she felt pain. It is further alleged that Lagni Bai (PW/1) noticed swelling on her private part, however, as it was dark, on the next day after consulting some female members of the village, the report was lodged. Based on this report, offences under Section 376/511 IPC was registered against the accused/appellant. On 25.10.2007 the prosecutrix was medically examined by Dr. Shashi Cladious vide Ex.P/8 who opined that secondary sexual characters were not fully developed, no odour, swelling, tenderness, bleeding and secretion were present on the medial side of thigh, labia majora and minora respectively. Hymen was intact, she was not habitual to intercourse and no intercourse was done with the prosecutrix. After investigation, charge sheet was filed against the accused/appellant under Section 376/511 IPC, however, the trial Court has framed the charges under Sections 377 and 376 (2) (f) IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties

and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been falsely implicated in the crime in question on account of old enmity;

(ii) that the medical report of the prosecutrix does not support the prosecution case;

(iii) that the accused/appellant had already served the entire sentence imposed upon him and has been set free on 28.01.2011.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Lagni Bai (PW/1)-grand-mother of prosecutrix while supporting the prosecution case has stated in her evidence that her son and daughter-in-law had gone to Nagpur for their livelihood leaving behind the prosecutrix aged about four years along with her. She has further stated that the accused/appellant came to her house, took the prosecutrix along with him near transformer offering chocolate, lay her down, removed her and his undergarments, inserted his finger in her private part, thereafter, the accused/appellant tried to insert his penis in her private part as a result of which the prosecutrix started weeping and upon her return she narrated the entire incident and also complained of pain in her private part. According to this witness, she had noticed swelling on her private

part. She also states that as it was dark, on the second day she informed the incident to village Kotwar, Sarpanch and other members of the village and the report thereof was lodged in the police station. The prosecutrix was medically examined by the Doctor. In cross-examination this witness stood very firm and there is no material deviation in the same.

09. Suklal (PW/2)-Kotwar of the village has stated that on the next day morning he was informed about the incident by Lagni Bai (PW/1) that the accused/appellant took prosecutrix along with him near transformer, lay her down, removed her and his undergarment, inserted his finger in her private part, and thereafter, tried to insert his penis as a result of which she developed pain in her private part. Prosecutrix (PW/3) has deposed that it is the accused/appellant who took her along with him near transformer offering chocolate, lay her down, inserted his finger in her private part, and thereafter, tried to insert his penis in her private part (कुला) as a result of which she developed pain in her private part. In the cross-examination the prosecutrix stood very firm and has not deviated from her statement made in the examination-in-chief. She has further clarified as to in what manner the attempt was made by the accused/appellant to commit rape upon her and she had suffered pain as also swelling in her private part. Bahadur Singh (PW/4) is a Patwari who prepared spot map vide Ex.P/5. Mantora (PW/5), Kanti Bai (PW/6) and Tulara-Sarpanch of the village are the witnesses whom the incident was narrated by Lagni Bai (PW/1) and they have also duly supported the prosecution case. Dr. (Ms.) Shashi Cladious (PW/8) who medically examined the prosecutrix vide Ex.P/8 has stated in her evidence that external genitalia and secondary sexual characters of the prosecutrix

were not fully developed, no odour, swelling, any tenderness, bleeding and secretion were present on the medial side of thigh, labia majora and minora respectively. Hymen was intact. According to this witness, no intercourse was done with the prosecutrix. Lular Singh (PW/9) is a seizure witness of Ex.P/6 and has duly supported the prosecution case. D.R. Pandey (PW/10) is Investigating Officer who has duly supported the prosecution case. Dr. R.K. Gore (PW/12) who medically examined the accused/appellant vide Ex.P/12-A has stated that the accused/appellant was capable of performing sexual intercourse. F. J. Minj (PW/13) - Station House Officer has recorded the diary statement of the prosecutrix.

10. Close scrutiny of the evidence makes it clear that on 24.10.2007 it is the accused/appellant who took the prosecutrix aged about 4 years near transformer offering chocolate, lay her down, removed her and his undergarments, inserted his finger in her private part, and thereafter, he tried to insert his penis in her private part and thereby attempted to commit rape upon her. Lagni Bai (PW/1) the lodger of FIR and the witnesses whom the incident was narrated by her have duly supported the prosecution case. Defence has not been able to substantiate the plea of false implication by satisfactorily explaining as to why the accused/appellant would be falsely implicated in this case rather all the witnesses have supported the prosecution case and denied the suggestion of false implication.

11. According to the considered opinion of this Court the evidence of Lagni Bai (PW/1), Prosecutrix (PW/3) and other witnesses, being completely trustworthy inspire full confidence and nothing has been brought on record by the defence to discredit or discard their

testimonies. I do not find any error with the impugned judgment and the same is in accordance with law.

12. Appeal thus does not appear to have any substance in it. It is accordingly dismissed.

13. As the appellant has already served the entire sentence imposed upon him and has been set free, no further order is required.

Sd/-

(Pritinker Diwaker)

JUDGE