

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 389 of 2009

- Ramu Yadav, S/o Siyalu Ram Yadav, aged about 19 years, residence of village Achhola, Thana- Tumgaon, Distt. Mahasamund (CG)

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh Through the District Magistrate, Mahasamund, Distt.- Mahasamund (CG)

---- Respondent

For appellant:
For Respondent:

Smt. Indira Tripathi, Advocate.
Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

28/03/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 6.5.2009 passed by the Sessions Judge, Mahasamund in S.T. No.14/09 convicting the accused/appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 10 years and fine of Rs.5,000/-, in default to undergo additional R.I. for 2 years.
2. Case of the prosecution, in brief, is that on 9.10.2008 at 10.30 a.m. report was lodged by the prosecutrix and based on which FIR (Ex.P-7) under Sections 376 & 506 (B) IPC was registered against the accused/appellant. It is alleged that in the intervening night 8-9/10/2008 the prosecutrix (PW-1) along with her friends Kalindri & Raju had gone to see religious programme organized near her house. In the midst of said programme, when she had gone to the compound of Chandrakar to answer the call of nature, the accused/appellant, who was already hiding there, caught hold

of her and forcibly took her inside the compound and thereafter committed forcible sexual intercourse with her after removing her clothes. It is further alleged that she raised her cries but accused/appellant gagged her mouth by his hand and asked her to keep quiet or else she would be killed and therefore due to fear, she did not raise cries. While she was being subjected to sexual intercourse by accused/appellant, Kumari Basanti, younger sister of prosecutrix, & Chhotu came there in search of her and upon seeing the light of torch, accused/appellant fled from the spot. The prosecutrix was sent for medical examination which was conducted by Dr. (Smt.) Alka Pardal (PW-3) on 10.10.2008 vide Ex.P-2 and she noticed following injuries/symptoms on the person of the prosecutrix:-

- secondary sexual characters were at the developing stage.
- No injury on any part of the body.
- Scanty pubic hairs were present.
- Hymen torn radially with irregular margin which were red.
- Vagina was admitting one finger with pain.
- Laceration of 2x1cm at lower end of vagina.

According to the doctor's opinion, the prosecutrix was sexually exploited within 48 hours of examination. Accused/appellant was also medically examined by Dr. Vipin Kumar Rai (PW-5) who gave his report of Ex.P-6 opining him to be fully capable of having sexual intercourse.

3. On completion of investigation, charge sheet was filed against accused/appellant for the offences punishable under Sections 376 & 506(B) of IPC followed by framing of charges by the Court below under the aforesaid sections. The prosecution in order to bring home the charges levelled against accused/appellant examined 13 witnesses in all. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

4. During the course of trial, the prosecutrix committed suicide, therefore, she was not available for examination and cross-examination by the trial Court.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, while acquitting the accused/appellant of the charge under Section 506B of IPC, convicted & sentenced him under Section 376 of IPC.
6. Learned counsel for accused/appellant submits that;-
 - in absence of court statement of the prosecutrix, the accused/appellant cannot be convicted for the offence of rape.
 - the prosecutrix was a consenting party and there is no legally admissible evidence showing her to be minor on the date of incident;
 - lastly she submits that the matter pertains to the year 2008, accused/appellant is in custody since January, 2009 i.e. for last about more than seven years, therefore the sentence imposed on him may be reduced to the period already undergone by him.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that from the FIR (Ex.P-7) lodged by the prosecutrix, evidence of Kumari Basant (PW-8), who saw accused/appellant fleeing from the spot, and the medical evidence, the prosecution has discharged its onus in establishing beyond reasonable doubt that the accused/appellant has committed rape on the prosecutrix and therefore the trial Court right in coming to the conclusion that the appellant had committed rape on the prosecutrix.
8. I have gone through the impugned judgment as also trial court record. I have heard counsel for the parties at length.
9. Manharan (PW-1) has stated that on the fateful night when he was returning home from the village pond, Laxminarayan & Horilal met him on the way and informed that accused/appellant had ravished the prosecutrix.

10. Dr. (Smt.) Alka Argal (PW-3) is the witness who medically examined the prosecutrix vide Ex.P-2 and noticed the injuries & symptoms as quoted above. She has opined that the prosecutrix was sexually abused within 48 hours of her examination.
11. Bishram Baghel (PW-4) is the In-charge Principal of the school where the prosecutrix was studying. This witness has stated that he had brought the original admission register of the school showing name of the prosecutrix at Sr. No.1086 and according to it, her date of birth is 2.1.1993. In the cross-examination this witness had stated that date of birth of the prosecutrix is recorded in the said register on the basis of her Class 5th mark-sheet.
12. Dr. Vipin Kumar Rai (PW-5) is the person who medically examined the accused/appellant vide Ex.P-6 and opined that he was capable of performing sexual intercourse.
13. Chandra Sekhar Dhruw (PW-6) is the person who registered the FIR (Ex.P-7). He also did investigation in the matter and has duly proved the prosecution case.
14. Laxminarayan (PW-7) is the brother of prosecutrix. He has stated that after the incident, the deceased used to remain sad usually and she had committed suicide. He has further stated that on the date of incident at about 12-1.00 a.m. in the night his younger sister Kumari Basant (PW-8) met him and informed that accused/appellant had forcibly took the prosecutrix towards the compound of Balla Chandrakar. She further informed that when she reached there and threw light from the torch, the accused/appellant fled from the spot. He has further stated that he was told by the prosecutrix that accused/appellant had undressed her.
15. Kumari Basant (PW-8) is the younger sister of the prosecutrix. She has stated that on the fateful night, she along with prosecutrix & others had gone to see the religious programme organized in the village. In the midst

of said programme, the prosecutrix had gone to answer the call of nature but did not return, therefore, she went towards the barnyard and tried to find out the prosecutrix in the light of torch, however, seeing the light of torch the accused/appellant fled from the spot. She has further stated that the prosecutrix was present there, she was crying and her clothes were stained with blood. She has further stated that the prosecutrix narrated the entire incident to her.

16. Bishal (PW-9) is the witness of seizure memo Ex.P-12 by which bloodstained piece of cloth was seized from the spot.

17. Dhamman (PW-10) is the person to whom the incident was disclosed by the prosecutrix. This witness has stated that he had noticed blood on the clothes worn by the prosecutrix at the time of incident.

18. Kalindri (PW-11) is the another girl who was present with the prosecutrix in the said programme, however, she has not stated anything against the accused/appellant.

19. Manish Shrivastava (PW-12) is Patwari who prepared spot map Ex.P-17.

20. In the present case the prosecutrix had committed suicide during the course of trial and thus she was not available for examination and cross-examination by the trial Court. In such contingency, the Apex Court has held that nevertheless if there is satisfactory evidence of the witnesses about the crime coupled with medical evidence establishing forcible sexual intercourse, the accused can be convicted on a charge of rape.

21. Close scrutiny of the evidence makes it clear that on the fateful day when the prosecutrix had gone to the compound of one Chandrakar to answer the call of nature, the accused/appellant, who was already hiding there, caught hold of her, forcibly took her inside the compound and committed forcible sexual intercourse with her after removing her clothes. Report of the incident was lodged by the prosecutrix herself wherein she had given

vivid description as to how the accused/appellant sexually assaulted her including running away of accused/appellant from the spot upon seeing torch light. According to Kumari Basant (PW-8), on the date of incident in the midst of religious programme organized in the village, the prosecutrix had gone to answer the call of nature and when she did not return, she reached on the spot with torch and in the light of torch saw the accused/appellant running away from the spot. At that time the prosecutrix was crying and her clothes were stained with blood. Statement of Dhamman (PW-10) also goes to show that the prosecutrix told him that the accused had spoiled her and he had noticed blood on her clothes. Clothes of the prosecutrix were seized vide seizure memo of Ex.P-10 and seizure witnesses i.e. PW-9 & PW-10 have duly supported the prosecution case. According to Dr. (Smt.) Alka Pardal (PW-3), who had examined the clothes vide Ex.P-3, the clothes of prosecutrix were stained with blood and off-white stains present over it could be of human semen. According to medical examination report (Ex.P-2) of the prosecutrix, her hymen was torn radially with irregular margin, one lacerated wound of 2x1cm size at lower end of the vagina was present and the prosecutrix was subjected to sexual abuse within 48 hours of her examination. The doctor ((PW-3) examining the prosecutrix has categorically stated that rupture of hymen cannot be said to have taken place before the incident as other injury marks were also present on her body. Nothing has been elicited by the defence as to why the appellant has been falsely implicated in this case and thus the stand of false implication taken by the accused/appellant is also not worth acceptance. Furthermore, after the incident the accused/ appellant was absconding and could be arrested on 16.1.2009 and this facet also raises an accusing finger towards the guilt of accused/appellant.

True it is that age of the prosecutrix has not been proved as required

under the law i.e. by examining the author of document by which the age is sought to be proved. However, considering the fact that at the relevant time the prosecutrix was studying in Class-7th and as per medical evidence, her secondary sexual characters were at the developing stage and pubic hairs were also found scanty, it cannot be said that on the date of commission of offence the prosecutrix was more than 16 years of age and that being so, even if it is held that at the relevant time the prosecutrix was a consenting party, it is of no help to the accused/appellant.

22. Thus, this Court is of the considered opinion that the circumstances attending the case, evidence of Kumari Basant (PW-8) & Dhamman (PW-10) coupled with the medical evidence clearly establish commission of the offence of rape by the accused/appellant.

23. As regards the sentence, considering the fact that the incident had taken place in the year 2008 and at the relevant time the accused/appellant was just a young lad and he is languishing in jail since 16.1.2009 i.e. for the last more than seven years, this Court deems it just, proper and in the interest of justice if the sentence imposed upon him is reduced to the period already undergone by him. Order accordingly.

24. Accordingly, the appeal is allowed in part. Conviction of accused/appellant under Section 376 IPC is hereby maintained, however, the jail sentence imposed on him under that section is hereby reduced to the period already undergone by him. Appellant is reported to be in custody, he be released forthwith if not needed in connection with any other crime.

Sd/-
(Pritinker Diwaker)
J U D G E

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