

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 101 of 2011

1. Chowa Ram Sahu S/o Kewal Ram Sahu, aged about 22 years, Occupation Labour R/o Village Singhourikala, Police Station Kurud, District Dhamtari Chhattisgarh.

---- Appellant (In Jail)

Versus

1. State of Chhattisgarh Through Station House Officer, Police Station Kurud, District Dhamtari Chhattisgarh.

---- Respondent

For Appellant:

Shri C.R. Sahu, Advocate

For Respondent:

Shri V. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

24/02/2016

1. This appeal is directed against the impugned judgment dated 12.11.2010 passed by the Sessions Judge, Dhamtari in S.T. No.37/2010 convicting the accused/appellant under Sections 450 & 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 05 years & fine of Rs.2,000/- and RI for 8 years & fine of Rs.3,000/-, plus default stipulations.
2. The facts of case, in brief, are that on 23.3.2010 FIR (Ex.P-1) was lodged by the prosecutrix (PW-1) alleging in it that she is studying in Class 6th and on 22.3.2010 when she was washing utensils after taking her meals, the accused/appellant came there, embraced her, took her in the kitchen and committed sexual intercourse with her after removing her underwear. It is further alleged that while accused/appellant was committing sexual intercourse with her, her father reached there and gave 2-3 slaps to the accused/appellant and he fled away from the spot. Thereafter the matter

was discussed in the panchayat meeting where the accused/appellant had admitted his mistake and therefore a decision to lodge report has been taken. Based on this FIR, offence under Sections 450 & 376 of the IPC was registered against the accused/appellant. The prosecutrix was sent for medical examination which was conducted by Dr. (Smt.) Asha Tiwari (PW-7) and her report is Ex.P-8. Accused/appellant was also medically examined by Dr. U.S. Navratan (PW-8) and he found him capable of performing sexual intercourse. On completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Sections 450 & 376 of IPC followed by framing of charges by the Court below under the aforesaid sections.

3. The prosecution in order to bring home the charges levelled against the accused/ appellant examined 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication.
4. After hearing counsel for the parties the trial Court has convicted & sentenced the accused/appellant for the offences as mentioned above.
5. At the outset, counsel for the accused/appellant submits that though the prosecutrix was a consenting party but considering the evidence regarding her age which shows that she was in between 13 to 16 years, he is not pressing this appeal so far as it relates to conviction part of the impugned judgment and would confine his argument to the sentence part thereof only. He further submits that the incident has taken place in the year 2010 and the appellant is in jail for the last more than 5½ years, therefore, the sentence of R.I. for 8 years imposed on him under Section 376 IPC may be reduced to seven years which is minimum sentence prescribed for commission of offence of rape.
6. On the other hand supporting the impugned, counsel for the State

submits that the trial Court has rightly convicted and sentenced the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that considering the fact that offence of rape has been committed upon a minor girl, no leniency can be shown to the appellant.

7. Heard counsel for the parties and perused the material available on record including the impugned judgment.
8. The prosecutrix (PW-1) has stated that on the date of incident at about 12.00 noon she returned from the school, took her meals and when she was washing the utensils, accused/appellant reached there, embraced her, laid her down, removed her underwear and committed rape with her. She has further stated that while the sexual intercourse was going on, her father reached there and slapped the accused/appellant and thereafter he fled away from the spot. She has further stated that at the relevant time her mother had gone to the field and on her return in the afternoon, she narrated the entire incident to her and also to her sister. She has further stated that a meeting was convened in the village in which the accused/appellant has admitted his guilt and therefore the report was lodged. In the cross-examination she has stated that she and her sister used to go to the house of accused/appellant to watch television and on the fateful day also after the incident she had gone to the house of accused/appellant to watch the television. She has stated that the accused/appellant came to her house just five minutes before the arrival of her father. She has reiterated that while the accused/appellant was committing sexual intercourse with her, her father came there.
9. Narottam (PW-2) is the father of prosecutrix and he has stated after purchasing the rice from the society, when he reached his house he saw the accused/appellant committing rape with his daughter, he gave 1-2

slaps to him and thereafter he fled away from the spot. He has further stated that in the village meeting the accused/appellant had confessed his guilt. This witness has stated that immediately after the incident he went to the father of accused/appellant and told him about the incident.

10. Dhaneshwari Sahu (PW-4) is the sister of the prosecutrix and has stated that the prosecutrix disclosed to her about the incident.
11. Chhabiram Sahu (PW-5) is the Up-Sarpanch of the village who has proved the fact that meeting in connection with the act done by accused/appellant was convened in the village in which he has admitted his guilt.
12. Jeevan Nagesh (PW-6) is the investigating officer and he has duly supported the prosecution case. He has also proved the school register wherein date of birth of the prosecutrix is mentioned as 10.8.1997.
13. Dr. (Smt.) Asha Tiwari (PW-7) is the person who medically examined the prosecutrix vide report Ex.P-8 and stated that her secondary sexual characters were not well developed, axillary & pubic hairs were found scanty, labia majora & minora were not fully developed, vulva was red & inflamed and hymen was intact but on touch the prosecutrix was complaining pain. She has opined that no mark of injury was seen in other parts of the body except in hymen & vulva and that partial penetration may have taken place within 24 to 48 hours.
14. Dr. U.S. Navratan (PW-8) examined the accused/appellant vide Ex.P-13 and opined that he is capable of performing sexual intercourse.
15. S.K. Sonkar (PW-9) is the investigating officer who has duly supported the prosecution case.
16. Doojram Sahu (PW-10) is the Head Master of the school where the prosecutrix was studying. He has stated that in the school register date of birth of the prosecutrix is mentioned as 10.8.1997. However, he has

admitted that at the time of admission of the prosecutrix he was not posted in the school and the entry in the register was not made by him.

17. In the present case counsel for the appellant is not challenging the conviction part but praying for reduction of sentence to the minimum one provided under Section 376 of IPC. The Supreme Court in catena of judgements has held that in an appeal against conviction, the appellate Court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.

18. In the light of the above principles, this Court proceeds to examine legality of the conviction imposed on the appellant on the basis of evidence available on record.

19. Minute examination of evidence makes it clear that the prosecutrix has made specific allegations against the accused/appellant for commission of rape. She has stated that on the date of incident at about 12.00 noon when she was washing the utensils, accused/appellant came there, embraced her, made her lie on the ground and committed forcible sexual intercourse with her after removing her underwear. She has further stated that while she was being subjected to sexual intercourse by the accused/appellant, her father reached there, gave 1-2 slaps to him and thereafter accused/appellant fled away from the spot. Statement of the prosecutrix is supported by her father Narottam Sahu (PW-2) who has

stated that when she reached the house after purchasing rice from the society, he saw the accused/appellant committing sexual intercourse with the prosecutrix as a result he gave 1-2 slaps to him. Version of the prosecutrix also finds support from the FIR lodged by her on the next morning in the police station. Medical evidence also supports the prosecution case, according to which injuries were present on the vulva & hymen, on touch the prosecutrix was complaining pain in hymen and presence of signs of inflammation are indicative of the fact that the partial penetration may have taken place within 24 to 48 hours.

20. 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-6th and as per medical evidence, her secondary sexual characters were not fully developed, axillary & pubic hairs were found scanty and her labia majora & minora were also not well developed, it cannot be said that on the date of commission of offence the prosecutrix was under 12 years of age and that being so, even it is held that at the relevant time the prosecutrix was a consenting party, it is of no help to the accused/appellant.

21. Thus, the overall evidence of the witnesses including the prosecutrix and the doctor who medically examined her, clearly goes to show that the accused/appellant with intent to commit sexual intercourse with the prosecutrix, a minor girl, had entered her house while she was alone in the house and taking advantage of her helplessness committed forcible sexual intercourse with her. Accordingly, the conviction part of the impugned judgment being just and proper, is not required to be interfered with.

22. As regards the sentence, considering the fact that the incident had taken

place in the year 2010 and at the relevant time the accused/appellant was just a young lad and he is languishing in jail since 24.3.2010 i.e. for the last about six years, this Court deems it just, proper and in the interest of justice if the sentence imposed upon him is reduced to RI for 7 years which is a minimum one for the offence under Section 376 of IPC. Order accordingly.

23. In the result, the appeal is partly allowed, conviction of accused/appellant as described above is hereby maintained. However, for the reasons detailed above, the sentence is reduced to R.I. for 7 years from that of RI for 8 years as has been imposed by the Court below under Section 376 of IPC.

Sd/-

(Pritinker Diwaker)
Judge

roshan