

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2127 of 1998

Judgment reserved on: 06.10.2016

Judgment delivered on: 19.10.2016

Ramji Marar, S/o. Ram Lal Marar, Aged about 35 years, Resident of village Khairi, P.S. Navagarh, District Durg (M.P.)

---- Appellant

Versus

State of Madhya Pradesh, Through Station House Officer, Navagarh, District Durg (C.G.) now State of C.G.

---- Respondent

For Appellant :- Smt. Smriti Shrivastava, Advocate

For Respondent :- Smt. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

(Delivered on 19th October, 2016)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 07.08.1998 passed by the Special Judge, Durg District Durg in Special case No. 276 of 1997 whereby learned Special Judge after holding the appellant guilty for committing rape of a woman when she was under 16 years of age, convicted the appellant for the offence punishable under Section 376(2)(f) of the Indian Penal Code and sentenced to undergo rigorous imprisonment

for ten years and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

2. Conviction is impugned on the ground that without there being an iota of evidence the learned trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. Case of the prosecution, in brief, is that the Prosecutrix Chandrika (PW-1) was the resident of village Khairikhar. She belongs to Scheduled Caste Community. On the date of incident, the prosecutrix along with her friend namely Mohini and Prabha (PW-2) had gone to field for gleaning the seeds of *soyabeen*, then the accused/ appellant came from her and escaped the friends of the prosecutrix, thereafter, the appellant forcefully caught hold the hands of the prosecutrix and dragged to the field of *Rahar* and lifted up her underwear and committed rape with her. The prosecutrix (PW-1) lodged First Information Report vide Ex.P-1 in Police Station Navagarh. The prosecutrix (PW-1) and the appellant were sent for medical examination to District Hospital, Durg vide Ex.P-9. Dr. Smt. Madhu Shrivastava (PW-10) examined her and gave her report vide Ex.P-9A. In Ex.P-9A, she found that the prosecutrix was minor girl with sparsely developed breast auxiliary and pubic hair was not developed. The appellant was also sent for medical examination vide Ex.P-14.
4. In further investigation, underwear was seized from the prosecutrix (PW-1) vide Ex.P-2. Underwear of the appellant was also seized from the appellant vide Ex.P-7. 2 slides of vaginal swab were prepared which were seized vide (Ex.P-2) from constable Pahluram vide Ex.P- 12. Seal packed articles were seized vide Ex.P-10A. Spot

map was prepared vide Ex.-P/4. Seized articles were sent to FSL, Raipur for examination vide Ex .-P/21.

5. After completion of the investigation, charge sheet was filed against the appellant under section 3(i)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 376(2)(f) IPC, in which Learned Special Judge acquitted the appellant under section under section 3(i)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and convicted the appellant under section 376(2)(f) of IPC.
6. To hold the appellant guilty, the prosecution examined the prosecutrix Ku. Chandrika (PW-1), Ku. Prabha (PW-2), Sumitrin Bai (PW-3), Patwari Baldau Prasad Tiwari (PW-4), Kotwar Krishna Kumar (PW-5), head constable Khemlal Sahu (PW-6), head constable Durga Prasad Chandrakar PW-7), Vidyacharan Baghel (PW-8), Dr. N.K. Tiwari (PW-9), Dr. Madhu Shrivastava (PW-10), DSP P.R. Kashyap (PW-11).
7. Smt. Smriti Shrivastava learned counsel for the appellant has submitted that there is considerable delay in lodging the FIR. It is submitted that in respect of the alleged incident of 09.11.1997, the FIR has been registered on 11.11.197 after a delay of three days which has not been explained satisfactorily. She further submits the case is of the year 1998 and the appellant has already suffered 2 years and 8 months of jail sentence. Therefore, the sentence imposed upon him may be reduced to the period already undergone by him.

8. Ms. Shobha Kashyap, Dy. Government Advocate for the State/respondent, while supporting the impugned judgment, submitted that the trial Court has rightly convicted and sentenced the appellant and the same does not call for any interference by this Court.
9. Prosecutrix- Ku. Chandria (PW-1) deposed in her statement that she knows the accused /appellant very well and the accused belongs to Marar caste. The appellant was residing at village Khairi. The incident is about 5-6 months back. On the fateful day, the prosecutrix along with her friend Prabha (PW-2) and Mohini had gone to field for gleaning seeds of soyabeen, then the accused/ appellant came from her and escaped the friends of prosecutrix namely Prabha (PW-2) and Mohini and caught hold the hands of the prosecutrix and dragged her to field of *Rahar* and fell down in the field and removed her underwear and also removed his underwear and penetrate his penis to vagina of the prosecutrix (PW-1). The blood was oozing out from vagina of the prosecutrix (PW-1). The prosecutrix having pain. After committing rape, the appellant fled away from there. The statement of the prosecutrix(PW-1) has supported by her cross examination.
10. Ku. Prabha (PW-2) deposed in her statement that on the date of incident, she had gone to field along with the prosecutrix and Mohini. While supporting the statement of the prosecutrix, she has stated that on the date of incident, the appellant escaped her and Mohini by showing stick and after catching the hands of prosecutrix the appellant dragged away and did not left her.

11. Sumitrinbai (PW-3) deposed in her statement that the prosecutrix PW-1 is her grand daughter (daughter's daughter). Her daughter, her son-in-law and her grandson went to Delhi for earning the livelihood. I was residing with Chandrika (PW-1) and her elder sister Chitrlekha. Chitrlekha was a handicapped. I went to the house of Sundear (grand daughter) to see *Mardahi*. Chandrika and Chitrlekha were alone in the house. When I came across the other day, in the evening, then I saw Chandrika (PW-1) was weeping and when asked the reason for weeping she told me that the appellant, who was residing at village Khari, has forcefully committed rape with her for which she was having pain in her private part, then I went to the house of Kotwar, Krishnakumar (PW-5) and reported the matter to Kotwar and on the next date, prosecutrix (PW-1) lodged the FIR Ex.P-1 in Police Station Navagarh. Sumitrinbai (PW-3) the grandmother of the prosecutrix (PW-1) also deposed in her evidence the appellant/ accused has forcefully committed rape on the prosecutrix.

12. Khemlal (PW-6) has deposed that he has registered the FIR Ex.P-1 and asked the reason for delay in lodging the FIR as the incident is of 09.11.1997 and the report was lodged on 11.11.1997 i.e after two days of incident. In the FIR, the cause of delay is mentioned that “ she was alone in the home and she was waiting of her grandmother who went to her relation”. Her grandmother returned home in the evening then she narrated the incident to her, thereafter her grandmother went to the house of Kotwar, and on the next day she lodged the report alongwith Kotwar. Prosecutrix (PW-1) and her grandmother also deposed in similar fashion.

13. Prosecutrix PW-1 has deposed in her evidence that Police has sent her for medical examination to Navagarh hospital thereafter to District Hospital, Durg where the stitches made on her private part and swelling were present. The statement of the prosecutrix (PW-1) matches with the statement of Dr. Madhu Shrivastava (PW-10) who conducted the medical examination of the prosecutrix.
14. Dr Madhu Shrivastava (PW-10) deposed in her deposition that on 12.11.1997 at about 4.15 PM, she has conducted the medical examination of the prosecutrix PW-1, aged about 11 years and gave her report that the prosecutrix was a minor girl sparsely developed breasts, auxiliary and pubic hair not developed. She tried to examine with little finger but due to tenderness of her age, in which the blood was oozing out, she found that secondary sex characters of the prosecutrix (PW-1) were not developed. She further deposed that her hymen was torn at two places and blood was oozing out. She opined that sexual intercourse may have been performed with the prosecutrix (PW-1) within 4 days. According to the medical evidence, the hymen of the prosecutrix (PW-1) was ruptured and blood was oozing out. The same is sufficient to prove the act of rape.
15. Dr. N.K. Tiwari (PW-9) examined him and gave his report vide Ex.-P/13, in which he found the appellant capable of committing sexual intercourse.
16. Vidyacharan Baghel (PW-8) has deposed in his deposition that he was posted as in-charge headmaster/Shikshakarmi in Primary School Juna Dadu. He further deposed that the name of Kumari Chandrika (the prosecutrix), daughter of Gita Satnami is recorded

at Serial No.85 in *Dakhil Kharij* (Admission and Discharge) Register. According to the *Dakhil Kharij* Register, the date of birth of the prosecutrix is 07.05.1984.

17. So far as determination of age is concerned, the learned trial Judge discussed the age of the prosecutrix (PW-1) in paragraph 14 of the impugned judgment and held that on the date of incident, the prosecutrix (PW-1) was 11 years old. The date of incident is 09.11.1997. The evidence of the prosecutrix (PW-1) was recorded on 20.04.1998. On the date of deposition, the prosecutrix (PW-1) stated her age to be 12 years.
18. Dr. Smt. Madhu Shrivastava (PW-10) specifically deposed in deposition that she conducted the medical examination of the prosecutrix (PW-1) and stated that sexual characters of the prosecutrix (PW-1) were not developed and in her report (Ex.P-9A), she has stated there may be difference of 2 years in the age of the prosecutrix. The posture of the girl with sparsely developed breast auxiliary and pubic hair not developed. Dr. Smt. Madhu Shrivastava (PW-10) recorded the age of the prosecutrix (PW-1) was as 11 -12 years. No single question was put by the defence to the doctor about age of the prosecutrix (PW-1). In the FIR (Ex.P-1) also, the age of the prosecutrix (PW-1) is mentioned as 11 years.
19. Looking to the above evidence available on record, I am of the considered view that the learned trial Court rightly held that on the date of incident, the prosecutrix (PW-1) was 11 years old.
20. On examining the instant case in its entirety, I find that the evidence of the prosecutrix (PW-1) is cogent, convincing, reliable

and trustworthy and also duly corroborated by the medical evidence. The learned trial Court has rightly accepted the statement of the prosecutrix (PW-1) and convicted the appellant. The finding of conviction of the appellant under Section 376(2)(f) of the Indian Penal Code does not call for any interference by this Court.

21. In the instant case, the appellant committed rape on the prosecutrix when she was under 11 years of age. The appellant is convicted for the offence under Section 376(2)(f) of the Indian Penal Code, which is punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable to fine. The learned trial Court punished the appellant with minimum prescribed sentence of imprisonment, i.e., rigorous imprisonment for 10 years. No adequate and special reason exists in the case for awarding sentence of imprisonment for less than 10 years. Therefore, the sentence awarded by the learned trial Court to the appellant is just and proper and does not call for interference.

22. In the result, I find no substance in the appeal, it deserves to be and is accordingly dismissed.

23. The appellant is on bail. His bail bonds are cancelled and he be taken into custody forthwith to serve out the remaining period of sentence imposed upon him. Copy of this judgment be sent to the concerned Court for information and compliance.

Sd/-
(Anil Kumar Shukla)
Judge