

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 920 of 2000

- Rajnesh alias Lallu Bajaj S/o Puroshottam Bajaj, aged about 23 years, R/o Sadar Bazar Bhatapara, P.S. Bhatapara Town Distt. Raipur

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh), Through P. S. Bhatapara Town, Distt. Raipur M.P. (Now C.G.)

---- Respondent

For Appellant :	Shri U.K.S. Chandel, Advocate
For Respondent/State :	Shri O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

13/12/2016

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by II Additional Sessions Judge, Balodabazar in Sessions Trial No. 340/99 on 31/03/2000, by which the appellant has been convicted under Section 376 of Indian Penal Code and has been sentenced with rigorous imprisonment of seven years along with fine of Rs.1000/- with default stipulation.

2. Prosecutrix (PW-4) lodged FIR (Ex.P/5) on 02/07/1999 in Police Station, Bhatapara, stating that she is a resident of Sadar Bazar, Bhatapara, appellant-accused was her neighbor about 2 years back to the date of lodging FIR. Appellant proposed that he will marry her and keep her as wife, thereafter made physical relation with her. On the first

time appellant came to her residence and forcefully raped her, thereafter he continuously came and had sexual intercourse with her. Due to which she got pregnant. She informed the appellant about her pregnancy, the appellant promised that he will marry her and take the child as his own. Prosecutrix (PW-4) gave birth to a male child on 21/06/1999. After this, appellant denied to marry the prosecutrix for which reasons she lodged the report against the appellant for the offence under Section 376 of IPC was registered. Prosecutrix was medically examined by Dr. Rita Chawa (PW-2) vide (Ex.P/3). Appellant-accused was also medically examined by Dr. Rakesh Chava (PW-3) vide (Ex.P/4). Slides prepared and preserved by doctor examining the prosecutrix were seized vide seizure memo (Ex.P/8). Spot map (Ex.P/11) was prepared. Seized articles were sent for FSL examination for (Ex.P/13) is on record. After completion of investigation the appellant was charge-sheeted. The appellant was charged under Section 376 of IPC, to which he denied and demanded for trial. Prosecution examined 11 witnesses. On examination under Section 313 of CrPC, appellant denied all the circumstances against him in the prosecution evidence and pleaded false implication. 5 witnesses were examined in defence. Impugned judgment was passed in which the trial Court has held the appellant guilty, convicted and sentenced as mentioned above.

3. The grounds in this appeal are these, the conviction against the appellant is contrary to facts of the case and law. It is a fact that FIR was lodged about two years after the incident. Prosecutrix became pregnant, even then no report was lodged. It has been shown in the evidence by the defence that appellant proposed in the meeting to

conduct a DNA test to find out the paternity of the child given birth by the prosecutrix, this proposal was not accepted by the prosecutrix. Learned trial Court has given finding on the basis of horoscope produced by the prosecution, to contradict this evidence, sufficient evidence was produced by the defence which was wrongly ignored. It is a case where the prosecution has relied on horoscope, whereas the school transfer certificate were available and could have been obtained in proof on the date of birth of the prosecutrix. It is submitted that appellant was entitled for benefit of doubt, the impugned judgment be set-aside.

4. It is submitted in the argument, that the statement of the key witness prosecutrix (PW-4), mother Meena Jain (PW-5) and brother Sanjay Jain (PW-6), have admissions which shows that prosecutrix and appellant had an affair between them, on the basis of which the relationship between the prosecutrix and appellant was very clearly based on the consent and on the date of incident prosecutrix had been more than 18 years of age. Other prosecution witnesses have not supported the case. Medical evidence as well, is not suggestive of any forceful sexual intercourse without the consent or willingness of the prosecutrix. It is admission in the statement of witnesses, that the proposal of appellant to conduct the DNA test with respect to paternity of the child born to prosecutrix to find out the paternity was not accepted by the prosecutrix and her family members, which goes to show the conduct of the prosecutrix. For these reasons, on the basis of the prosecution evidence no case of case was made out against the appellant.

5. Counsel for the State submits that the statement of prosecutrix (PW-4) is trustworthy which inspires confidence. The prosecution evidence has been accepted by the trial court, for these reason there is no scope for interference in the impugned judgment. Further the grounds urged in this appeal and the argument submitted on behalf of the appellant were also opposed.

6. Considering the arguments submitted and the material on the record, the question is whether the conviction against the appellant is supported with evidence of prosecution beyond reasonable doubt, for which the evidence before the trial court is perused and finding is arrived at.

7. Prosecutrix (PW-4) has recorded her age of 17 years at the time of lodging FIR. Meena Jain, mother of prosecutrix produced the horoscope at the time of recording evidence, which is (Ex.P/7) and it was taken on record. No statement was given by her about the date of birth mentioned in the horoscope. In cross-examination it is admitted by her that her daughter prosecutrix studied in Municipal school and in the school record her date of birth was recorded as 28/02/1980. She has denied that horoscope presented by her is a false document. No other witness was examined by the prosecution regarding the date of birth of the prosecutrix.

8. Narayan Prasad Sharma (DW-1) has stated that horoscope (Ex.P/7) was prepared by him and he has prepared this horoscope on the basis of the information about date of birth of child given by the parents or family members. Dr. Prabhakar Pandey (DW-2) stated about

the horoscope in his statement. Deep Kumar Sharma (DW-3) states that he is employee of Municipality, Bhatapara and on the basis of Register of Births and Deaths certificate (Ex. D/4) has been prepared. Dhanwaram (DW-4) is also employee of Municipality Bhatapara, he has stated that he made the entry in the Birth-Death Register of Municipality and the relevant entry as (Ex.D/8) is original register. In cross-examination he has admitted that the page of (Ex.D/8) was written by fountain pen and ink whereas the other side of the page is written by using refill pen. It is submitted by counsel for the State that discrepancies Ex.D/8 shows that the Municipal register was manipulated.

9. Birth and Death register kept in office of Municipality is a public document. The entries made in such register are part of that public document. Presumption goes in favour of public documents that the act done by the Public Officer making entry was done lawfully and according to the rules. On the basis of some statement, no assumption can be made that the document was concocted, manipulated or forged. To rebut the presumption available in this case cogent and sufficient evidence was needed to be produced by the prosecution, which has not been produced. On the contrary as it seems no investigation was done by the Investigating Officer to ascertain the date of birth of the prosecutrix. Mother of the prosecutrix (PW-5) who herself produced the horoscope of the prosecutrix (Ex.P/7) at the time of recording of evidence in court, which was taken on record without any objection from both the sides.

10. Trial Court has given its finding in the impugned judgment by believing the date of birth given on horoscope (Ex.P/7) and rejecting the defence evidence without assigning any sufficient reason, as to on what basis the presumption available to the public document was found rebutted in the prosecution evidence. The burden of defence is not equivalent of that of prosecution to prove its case beyond reasonable doubt. It is sufficient for defence to establish its case on the basis of preponderance of probabilities. In this case, the evidence of defence has shown that the date of birth of prosecutrix was 28/02/1980 there had been no evidence to rebut the presumption available in the public documents. On the contrary horoscope (Ex.P/7) is a private document, which was not a document relied by the prosecution since the beginning of prosecution, hence the finding given by the trial Court in this respect had been erroneous.

11. According to the Birth and Death Register of Municipality, age of prosecutrix on the date of lodging FIR was about 19 years and 4 months, taking this age under consideration, even if it is accepted that appellant-accused started having sexual intercourse with prosecutrix 2 years prior to the date of FIR, then on the date of their relation, the age of prosecutrix would be 17 years and 4 months. The age for giving consent for sexual intercourse before the amendment incorporated in the Indian Penal Code under Section 375 and 376 in 2013 had been 16 years as per the provision of law in force at that time in the year 1999.

12. Prosecutrix (PW-4) has stated that for the first time appellant came to her house and forcefully raped. He threatened that if she told

anybody about it he will defame her. After that appellant-accused often used to come to her residence and rape her, due to which she got pregnant. Prosecutrix informed about her pregnancy, then appellant assured that he will marry her. Then prosecutrix told about this incident to her mother. Later on, prosecutrix gave birth to a male child on 26/06/1999, after which appellant denied marrying her. One community meeting was held, before which appellant admitted the allegation and even then he did not take her. For this reason she lodged the report (Ex.P/5). In cross-examination she has stated that she has not raised alarm because the appellant threatened her that he will defame her. She has denied, that appellant proposed for DNA test to determine paternity of child and she also denied that she refused for DNA test.

13. Meena Jain (PW-5) is mother of the prosecutrix, she came to know her daughter-prosecutrix (PW-4) was pregnant from the accused. She called a meeting of the community. In cross-examination, she admitted that in the meeting appellant proposed, that by DNA test, if it is found that he is father of the child then he will adopt the child and marry the prosecutrix. She also admitted that DNA test was not conducted. Sanjay Jain (PW-6) is cousin brother of the prosecutrix, he came to know that appellant and prosecutrix had an affair and one male child was born to the prosecutrix. He was also present in the meeting where appellant stated that he is not father of the child though he had affair with the prosecutrix. In cross-examination he admitted that appellant proposed for DNA test saying that though he had an affair but he had never physical relationship with the prosecutrix. Anil Jain (PW-7) was present in the meeting where appellant denied the paternity of child and

proposed for the DNA test. In cross-examination he has stated that prosecutrix and others asked for time of 2-3 days and later on they informed nothing. Ashok Kumar Jain (PW-9) has stated similar. He has also witnessed the meeting. Kailash Jain (PW-10) has not supported the prosecution case and has been declared hostile. Station House Officer H.K. Chaturvedi (PW-11) has conducted the investigation.

14. On going through the evidence of prosecutrix and witnesses produced by the prosecution, it is obvious and apparent that the appellant and prosecutrix started their sexual relationship some time two years prior to the date of FIR. On that date, the age of prosecutrix had been more than 17 years, as per the finding arrived at in this judgment. According to law in force at that time the age for giving consent for sexual intercourse was 16 years. As per the statement of prosecutrix she never told anybody about her relationship for threat given to her by the appellant and appellant remain a frequent visitor of her house and used to have frequent sexual intercourse with her, which clearly shows that prosecutrix consented all the time and had been willing to have appellant in this relationship. The things changed when the prosecutrix became pregnant. After pregnancy she informed about her relationship to her mother, even then no information was given either to the Police or to the members of their community. After delivery of child when appellant finally refused to have prosecutrix as his wife, FIR was lodged which has resulted in the prosecution. This is a case in which the prosecutrix and her family members could not give a desired end to the relationship between the prosecutrix and the appellant, which became the reason for lodging FIR against appellant and this

prosecution. Although the relationship case has been based on the consent of the prosecutrix while the prosecutrix was competent to give consent. Under these circumstances the evidence of prosecutrix cannot be considered as reliable and trustworthy. It was a clear case where appellant should have been extended benefit of doubt. For this reason, the finding of conviction recorded by the trial Court is erroneous, which is not based on proper evidence, it is required to be interfered with. Hence, this appeal is allowed. The impugned judgment of conviction and sentence is set-aside. The appellant is acquitted of charge.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE