

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 620 of 2004

Judgment reserved on: 27.10.2016

Judgment delivered on: 11.11.2016

Johru Ram, S/o. Leelaram Dhimar, Aged about 30 years, R/o.
Shitalapara Dhamtari, P.O. and Thana Dhamtari (C.G.)

---- Applicant

Versus

State of Chhattisgarh through District Magistrate Dhamtari (C.G.)

---- Respondent

For Applicant	:-	Mr. Shrawan Agrawal, Advocate
For Respondent	:-	Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. By this criminal revision applicant has challenged the legality and propriety of the judgment dated 29.11.2004 passed by Additional Sessions Judge, Dhamtari in Criminal Appeal No. 38/2001 affirming the judgment of conviction and order of sentence dated 20.08.2001 passed by Judicial Magistrate First Class, Dhamtari in criminal case No. 320/2001 after holding the applicant guilty for the commission of unnatural offence convicted under Section 377 of the Indian Penal Code and sentenced rigorous imprisonment for 3 years and fine of Rs. 500/-.
2. The conviction is impugned on the ground that without any legal and clinching evidence the Courts below have convicted and sentenced the applicant and thereby committed illegality.

3. Brief facts of the prosecution case is that on 12.01.1995, the applicant took victim- Ganesh Satnami, a minor boy of 11 years, on his bicycle to Village Khaprikhar where at a lonely place he slammed the victim onto the ground of a medh and committed unnatural intercourse with the victim. On the victim's screaming, the applicant gagged his mouth by his hand and threatened him to kill and fled away from there. Thereafter, the victim reported the matter to his mother and he along with his mother went to Police Station-Arjuni where he lodged First Information Report against the applicant for the offences punishable under Sections 377 and 506-B of IPC, on the same day.

4. After completion of the investigation, charge-sheet was filed against the applicant under sections 506-B and 377 of IPC. The trial Court acquitted the applicant of the charge framed against him under section 506-B of IPC, but convicted him for the offence punishable under Section 377 of IPC and sentenced him to undergo RI for 3 years with fine of Rs.500/-.

5. The conviction and sentence were challenged by the applicant before the Additional Sessions Judge, Dhamtari in Criminal Appeal No. 38/2001 on 29.11.2004 and the appellate Court has affirmed the judgment of the trial Court and rejected the appeal filed by the applicant.

6. Learned counsel for the applicant submitted that learned trial Court has not considered the fact that no injury was found over the body of the applicant or victim which is suggestive of the fact that no offence has been committed by the applicant and he has been falsely implicated in the case. The trial Court has not considered the evidence of the witnesses available on record and the statement which are

recorded were related to each other. There are material omissions and contradictions in the statements of the prosecution witnesses, therefore, their evidence is not trustworthy, cogent and credible. Hence, the conviction and sentence of the applicant is not sustainable and he may be acquitted of the charge framed against him.

7. On the other hand, learned counsel appearing on behalf of the State has supported the impugned judgment and submitted that there is no illegality or infirmity in the impugned judgment and the revision does not warrant any interference by this Court.

8. The questions arising for consideration before this Court are that :

- (i) Whether the applicant had committed unnatural intercourse on the victim or not;
- (ii) Whether the conviction and sentence of the applicant suffers from illegality, perversity or not.

9. To hold the applicant guilty, the prosecution examined victim- Ganesh (PW-1), Shakun Bai (PW-2), mother of the victim, Bishu (PW-3), Sub-Inspector Amar Singh Dhruv (PW-4), Dr. Abdul Rashid (PW-5), Constable Rambaksh Rajak (PW-6) and Head Constable R.R. Patel (PW-7).

10. The evidence led by the prosecution is that the incident occurred on 12.01.1995 at about 12:00 noon and the FIR was lodged on the same day at about 2:20 pm in Police Station Arjuni. In the FIR, it was stated that the applicant took victim- Ganesh Satnami (PW-1) on his bicycle to Village Khaprikhar and at a lonely place he slammed the victim down on the ground and committed unnatural intercourse. Immediately after the incident, the victim along with his mother lodged FIR (Ex.P-1) in Police Station Arjuni.

11. The act of the applicant could not be denied as victim-Ganesh (PW-1) and his mother, Shakun Bai (PW-2) have clearly deposed in their examination-in-chief in support of the prosecution. The applicant in his defence has stated that in absence of any independent witness, one cannot believe the evidence of the prosecution. In the cross-examination of victim-Ganesh Satnami (PW-1), Shakun Bai (PW-2) and Bishu (PW-3), they have clearly stated that there was no previous enmity between the applicant and the victim or his family members, for which reason the applicant has been falsely implicated in the case.

12. Dr. Abdul Rashid (PW-5) has deposed in his evidence that he conducted medical examination of the victim vide Ex.P-2 in which he stated that he did not find any internal or external injury on the body of the victim and there was no bleeding on anus of the victim. According to his report, the applicant was able to perform sexual intercourse.

13. Learned counsel for the applicant further argued that victim-Ganesh is a minor boy, aged about 11 years and only on the basis of the evidence of this child witness, the applicant can not be convicted. He placed reliance on **Sekaran v. State of Madras, 2010 STPL 6613**, wherein after one year, when the child witness was called for further cross-examination, she supported the version of the prosecution, whereas in her examination-in-chief, she denied the same and stated that there was no truth in any of the facts spoken by her. The child witness is capable of being tutored and there are overwhelming evidence reflecting such tutoring and her evidence does not inspire the confidence of the Court.

14. In the instant case, FIR was promptly lodged on the same day by the victim & his mother in the Police Station. It is totally corroborated

by the statement of the witnesses victim- Ganesh (PW-1) and his mother, Shakun Bai (PW-2) and there is no difference in the statement of these witnesses recorded under section 161 of Cr.P.C. as well as in the FIR. Therefore, there is no reason to disbelieve the statements of these witnesses. There is no such fact in the revision by which their statements cannot be relied upon and no evidence has been led by the applicant in his defence. Moreover, the incident occurred at an isolated spot in the field therefore, there is no question of any independent eyewitness.

15. So far as delay in proceeding is concerned, the incident occurred on 12.01.1995 and the FIR was lodged on the same day. However, after the incident, the accused had absconded and he was arrested on 22.01.1995 and thereafter, the investigation initiated. In this circumstance, there is no delay in the proceeding.

16. On perusal of the evidence of victim-Ganesh (PW-1), his mother (PW-2) and Dr. Abdul Rashid (PW-5), it is clear that on 12.01.1995, the applicant took victim on his bicycle to Village Khaprikhar, where at a lonely place, he committed unnatural intercourse with the victim. There is nothing on record to disbelieve the statement of the victim which is fully corroborated by the statement of his mother, Shakun Bai (PW-2) and also by medical evidence (Ex.P-2), wherein the doctor, who medically examined the victim, had found laceration on anus. In view of the same and looking to the age of the victim and gravity of the offence, I am not inclined to interfere with the conviction imposed upon the applicant by the trial Court which has also been affirmed by the lower appellate Court at the appellate stage.

17. After appreciating the evidence available on record learned Judicial Magistrate First Class, Dhamtari has convicted the applicant under section 377 of IPC and while appreciating the evidence learned First Additional Sessions Judge, Dhamtari has affirmed the conviction of the applicant, both the Courts below have rightly convicted the applicant. Courts below have neither exceeded nor failed to exercise the jurisdiction vested on them.

18. As regards the question of sentence is concerned the applicant being an adult man has committed an unnatural intercourse with the minor boy aged about 11 years, thus his act does not call for any leniency in conviction part.

19. Considering the age of applicant at the time of commission of offence some lenient view would be just and reasonable to meet the ends of justice. Consequently, this criminal revision is partly allowed. Conviction of the applicant Under Section 377 the Indian Penal Code is hereby maintained. Instead of sentence of rigorous imprisonment for 3 years and fine of Rs. 500, he is sentenced to rigorous imprisonment for 1 year and fine of Rs. 2000.

20. The applicant was in custody for some period. He is entitled for set off for the period of incarceration. At present, he is on bail. He shall surrender immediately before the Judicial Magistrate First Class, Dhamtari in Criminal Case No. 320/2001 for serving out the remaining part of sentence.

Sd/-
(Anil Kumar Shukla)
Judge