

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 81 of 2009

Shankar Lal @ Bhuru Ganda, S/o Jogiram Ganda, aged about 55 years, R/o village Jamdi, Police Station – Basna, District Mahasamund, CG

---- Appellant

Versus

State Of Chhattisgarh through District Magistrate, Mahasamund, District Mahasamund, CG.

---- Respondent

For Appellant.	-	Smt. Indira Tripathi, Advocate.
For Respondent.	-	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

18/03/2016

This appeal is directed against the judgment and order dated 05.01.2009 passed by Sessions Judge Mahasamund in Sessions Trial No. 55/2008 convicting the accused/appellant under Sections 376 and 506 (Part-II) IPC and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs. 3000/- u/s 376 and rigorous imprisonment for one year with fine of Rs. 500/- u/s 506 (Part-II) IPC, plus default stipulations.

2. As per the case of prosecution, written report Ex. D-1 was lodged by the prosecutrix – a physically disabled woman aged about 25 years at the relevant time stating that about 4-5 months back when her parents had gone out for earning livelihood, accused/appellant came there and taking advantage of her

loneliness lifted her away to the kitchen garden and after removing her clothes committed forcible sexual intercourse with her. The accused/appellant also threatened her to be done to death in case she opened her mouth before anyone. After conception, she narrated the entire incident to her parents and brother. Based on this written report, FIR Ex. P-1 was registered on 3.2.2008 against the accused/appellant under Sections 376 and 506 IPC and the prosecutrix was medically examined by Dr. (Smt.) Chandra Kiran (PW-5) who gave her report Ex. P-4. After completion of investigation, charge sheet was filed by the police for the offences punishable under Sections 376 and 506 IPC followed by framing of charge by the Court u/s 376 and 506 (Part-II) IPC.

3. So as to hold the accused/appellant guilty, prosecution has examined 09 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that the prosecutrix was a consenting party to the sexual intercourse done with her by the accused/appellant which is apparent from the silence maintained by her for a long period of about 4-5 months even after carrying pregnancy and there is no satisfactory

explanation by her as to this inordinate delay in lodging the FIR. She further submits that in the written report the prosecutrix has stated that the incident took place about 4-5 months before the lodgment of FIR but as per the medical report she was carrying pregnancy of 26 weeks, and in these circumstances the possibility of her pregnancy through some other man cannot be ruled out as according to the mother of the prosecutrix herself other boys also used to come to her house. Lastly, it is submitted that if conviction part of the judgment impugned is not going to be touched, at least the accused/appellant's sentence may be reduced to the period already undergone by him which comes to 7 years and 8 months.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 376 and 506 (Part-II) IPC are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-3) has stated in her evidence that 5-6 months prior thereto when her family members had gone to earn wages, the accused/appellant lifted her away to the kitchen garden and committed forcible sexual intercourse with her putting her under threat of being finished in case of disclosure to anyone. This act was repeated for number of times and after she started vomiting, disclosure came forth by her. Before starting cross-examining her, the Court below has put a note to the effect that

the prosecutrix was polio affected, unable to walk, speaks with interruptions and looks young to her actual age. The written report Ex. P-1 is stated to have been written by her brother and she was not aware as to what is written therein but has just put her thumb impression on that. According to her, she has one brother and two sisters and all three are paralyzed. She has stated that the kitchen garden is adjoining to the road where public movement is common. She has reiterated that her sexual relations with the accused were going for last 3-4 months and in between she did not disclose the same to her parents. Dhajuram (PW-1) - the father of the prosecutrix has stated that the prosecutrix is handicapped and cannot even talk properly and for that they used to arrange food for her while leaving for the workplace. According to him, in the month of February or March when the prosecutrix started vomiting, he called his nephew Lalit Kumar (PW-4) - a medical apprentice, who on examination informed him that she was pregnant by six months. Thereafter, on being asked the prosecutrix told him that for all that the accused/appellant was responsible but on account of his threats of life, she kept quiet and did not open her mouth. Darasmoti (PW-2) - the mother of the prosecutrix has made almost similar statement like Dhajuram (PW-1). She has stated that in her absence the boys used to visit her house. Lalit Kumar (PW-4) - the cousin of the prosecutrix has stated that when the prosecutrix was unwell, he was called by her father and on examination he found her to be pregnant by 5-6 months. Dr. (Smt.) Chandra Kiran (PW-5) is the witness who medically examined the prosecutrix and gave her report Ex. P-4 stating that she was carrying pregnancy of 26

weeks and that her both legs were polio affected. Rajiv Chandra Tandon (PW-6) is the Patwari who prepared spot map Ex. P-5. Resham Lal (PW-7) has stated that the prosecutrix was suffering from polio and that her family members came to know about the incident 5-6 months after her conception and with the passage of time she had delivered a still born baby. G.S. Sahu (PW-8) is the investigating officer who has duly supported the case of the prosecution. Dr. Jai Prakash Pradhan (PW-9) is the witness who medically examined the accused/appellant and gave his report Ex. P-12 stating that he was fully capable of performing sexual intercourse.

9. Evidence on record thus makes it clear that on the date of incident when the prosecutrix - a polio affected woman was all alone in her house, the accused/appellant - a man in his late fifties came there, lifted her away to the kitchen garden and after removing her clothes committed forcible sexual intercourse with her. This happened not once but continued on number of occasions also and because of this act of the accused she ultimately became pregnant and later delivered a still born baby too. What is more pitiable is that the accused - a physically and mentally grown up man did not think even once as to what he was doing with a woman who was already the victim of destiny having lost movement of her limbs on account of everlasting demonic disease such as polio and thereby made her bear an unbearable burden by making her pregnant turning a blind eye to her condition where she was not able to bear the burden of her own even. True that there is a huge time gap between the incident and lodgment of

report but it may be due to variety of reasons such as social ignominy etc and eventually when the outcome of the act of the accused could not remain hidden, she took the legal recourse.

10. Thus the act of the accused in sexually exploiting a physically disabled woman for a considerable period of about six months and ultimately making her bear the unwanted burden of unwed conception does not call for any sympathy from this Court. Court below has been fully justified in convicting him under Sections 376 and 506 (Part-II) IPC and the same is being maintained by this Court as well.

11. As regards sentence, keeping in view the fact that out the total sentence of 10 year imprisonment, the accused/appellant has already remained in jail for about 7 years and 8 months and that by now he must be in his late sixties, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone by him. Order accordingly.

12. As the appellant is reported to be in jail, he be set free forthwith if not required in any other case.

13. In view of the observations made above, the appeal is allowed in part.

Sd/-

(Pritinker Diwaker)
Judge