

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 149 of 2012

- Laluram S/o Kasiram, aged about 60 years, Occupation Labour, R/o Behind Bharavillage Rudgaon, Thana Dongargaon, District Rajnandgaon, CG

---- Appellant

Versus

- State Of Chhattisgarh Through SHO Dongargaon, District Rajnandgaon C.G.

---- Respondent

For appellant	:	Shri Arvind Sinha, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

29/01/2016

This appeal is directed against the judgment and order dated 30.8.2011 passed by Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 79/2010 convicting the accused/appellant under Sections 376, 363 and 366 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs. 1000/- u/s 376 and rigorous imprisonment for five years with fine of Rs. 1000/- each u/s 363 & 366 IPC, plus default stipulations.

2. As per the case of prosecution, on 29.9.2010 FIR (Ex. P-1) was lodged by the mother of the prosecutrix namely Gajri Bai (PW-1) alleging therein that her mentally challenged daughter (prosecutrix) aged about 15 years though is unable to speak properly, can manage to understand the things. It is alleged that on 25.9.2010 after returning from school when the prosecutrix

went out to play, accused/appellant allured her to his house on the pretext of teaching and committed forcible sexual intercourse with her. After getting back home, the prosecutrix took her meal and went to sleep, however, in the next morning she complained pain in her private part and thigh. On being asked, she explained the entire incident of being subjected to rape by the accused/appellant, in unrefined wordings as also by gesticulation. Thereafter, she fomented the private part of the prosecutrix and narrated the incident to her husband as also the villagers and then a decision was taken to lodge the report. Based on this FIR, offence under Section 376 IPC was registered against the accused/appellant. Prosecutrix was medically examined by Dr. Saroj Gandhrav (PW-3) who vide report Ex. P-5 has opined that she was subjected to rape. After completion of investigation, charge-sheet was filed by the police under section 376 IPC. Court below however framed the charge under Sections 363, 366 and 376 IPC.

3. In order to prove the guilt of the accused/appellant, prosecution has examined 07 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 his guilt and pleaded innocence and false implication in the case.

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

5. Counsel for the accused/appellant submits that a very improbable story has been put forth by the prosecution that the accused/appellant aged about 60 years that too having his own family has committed forcible sexual intercourse with the minor and mentally weak prosecutrix. He submits that on account of some dispute with one Pomin Bai (PW-4) in whose house the appellant was living as tenant, he has been implicated in an absolutely false case. Counsel for the appellant also pleads in his defence the four days' delay in lodging the report which has not been properly explained by the

prosecution. At last, looking to the advanced age of the accused/appellant, he makes a submission for leniency in sentence to imprisonment of seven years from that of ten years.

6. On the other hand, counsel for the respondent/State whole-heartedly supports the judgment impugned and submits that as Gajri Bai (PW-1) and the prosecutrix (PW-2) have duly supported the case of the prosecution, the findings of the Court below holding the appellant guilty u/s 363, 366 and 376 IPC are fully justified. According to the counsel for the State, in the village meeting the appellant has also confessed his guilt before Jaylal (PW-6) that he had committed rape on the prosecutrix. State counsel submits that keeping in mind the beastly act of the appellant in ravishing a minor and mentally ill girl, he is not entitled for any sympathetic consideration. As regards sentence, he submits that such perverted wrongdoers, if shown sympathy by law, are a threat to the society irrespective of the fact that how old they are. He submits that the Court below has already been lenient in awarding him the sentence of 10 years imprisonment otherwise it should have been much harsher.

7. Heard counsel for the parties and perused the material available on record.

8. Smt. Gajri Bai (PW-1) - mother of the prosecutrix has stated in her evidence that her daughter (prosecutrix) is mentally challenged and is unable to speak properly. According to this witness, on the date of incident when she returned from the field in the evening, the prosecutrix had gone to play with her friends and got back home at about 8 in the night. Thereafter, she complained pain on her thigh and private part by gesture, on which she fomented the paining spot and then after taking meal she went to sleep. According to this witness, when she asked the prosecutrix as to how she was feeling pain, it was told by her through gesticulation that the accused/appellant had taken her to his house on the pretext of teaching, and

further pointing towards her breasts and thigh, she tried to describe the things which made this witness understand that she (prosecutrix) was subjected to rape by the accused/appellant. According to her, on seeing the private part of the prosecutrix, she found swelling and then the incident was informed to the villagers. According to this witness, after her husband returned to the village, the Panchayat meeting was called in the village which was attended by the prosecutrix and the accused/appellant as well and on being asked by the elderly people present in the Panchayat meeting, the prosecutrix disclosed the incident in her own raw style, and at the same time the accused/appellant also admitted his guilt of commission of rape on the prosecutrix. Prosecutrix (PW-2) was examined in the Court through Smt. Padma Sahu – the teacher of Deaf and Dumb school where she was prosecuting her studies, and from her entire gesticulated description clarified by the assisting teacher, it is apparent that the accused/appellant committed forcible sexual intercourse with her. Dr. Saroj Gandharv (PW-3) is the witness who medically examined the prosecutrix and gave her report Ex. P-5 stating that she noticed congestion and reddishness in her vagina which admitted two fingers with difficulty and according to her opinion she was subjected to sexual intercourse. Pomin Bai (PW-4) - the landlady of the accused/appellant has stated that after being informed by the mother of the prosecutrix that the accused/appellant had taken her daughter to his house, she went to him and asked as to why he committed the offence against the prosecutrix but he denied the same saying that he did not do anything like that. Jailal (PW-6) is a villager in whose presence the accused/appellant had made confession of his guilt in the Panchayat meeting and he has duly supported the case of the prosecution. Dr. D.S. Parihar (PW-7) is the witness who medically examined the accused/appellant and gave his report Ex. P-9 stating that he was capable of performing sexual intercourse. Kailash Bajpai (PW-8) is the investigating officer who has duly supported the case of the prosecution.

9. The aforesaid discussion on facts involved and the evidence adduced

by the prosecution particularly that of Gajri Bai (PW-1), the prosecutrix (PW-2) and Jailal (PW-6) makes this Court to arrive at a conclusion that on the date of incident, the accused/appellant allured the minor and mentally challenged prosecutrix to his house on the pretext of teaching and committed forcible sexual intercourse with her. Further, the congestion and reddishness in the vagina of the prosecutrix as pointed out by the examining doctor (PW-3) further corroborates the brutal act of the accused/appellant. As regards the argument of counsel for the appellant that there is four days' unexplained delay in lodgment of the report, this Court does not find any substance in the same as in such offences there are so many factors such as deliberation among the family members about the course of action to be adopted, which many a time hinder the promptness in doing so and that is what has taken in the case in hand also because mother of the prosecutrix (PW-1) herself has stated that her husband returned home two days after the incident and then the Panchayat was held and the decision to lodge the report was taken. Moreover, it is settled legal position that in rape cases if the victim and the other important witnesses are reliable and trustworthy, delay in lodgment of report if any, is not fatal to the case of the prosecution. So is the position in this case also because mother of the prosecutrix (PW-1), prosecutrix (PW-2), examining doctor (PW-3) and the witness before whom the accused/appellant admitted his guilt in the Panchayat meeting have in categorical terms supported the case of the prosecution. Thus, the evidence on record speaks in volumes that it is the accused/appellant who after alluring the prosecutrix to his house on the pretext of teaching gave vent to his animalistic urge. Court below has been fully justified in basing its finding of conviction on the evidence on record and this Court does not see any flaw in the same.

10. Likewise, the concessional submission on sentence looking to the appellant being in his sixtees does not propel this Court to take a view other than the one taken by the Court below for the reason that age or stage has no nexus with the guilt or innocence.

11. In sum and substance, the appeal being unmerited is hereby dismissed with the affirmation of the judgment impugned.

Sd/-

(Pritinker Diwaker)
Judge

Jyotishi