

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 861 of 2012

1. Raghavendra alias Sattu S/o Manohar Verma, aged about 37 years, R/o Village : Nevnara, Police Station: Berla, Distt.: Bemetara C.G.

---- Appellant (in jail)

Versus

1. State Of Chhattisgarh Through Police Station: Berla, District, Bemetara C.G.

---- Respondent

For Appellant:

Shri V.C. Ottalwar, Advocate.

For Respondent:

Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

04/03/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 12.9.2012 passed by the Additional Sessions Judge, Bemetara in S.T. No.4/2007 convicting the accused/appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 7 years and fine of Rs.1,000/-, in default to undergo additional R.I. for 01 month.
2. As per prosecution case, on 16.1.2007 at about 10.15 p.m. FIR (Ex.P-1) was lodged by the prosecutrix (PW-1), aged about 14 years, alleging in it that on that day at about 7.00 p.m. she had gone to the house of Ramaiya Rawat to take milk, however, as the cow was not milked by that time therefore said Ramaiya asked her to come later. When she was coming back to home on foot, accused/appellant met her on the way, caught hold of her hand, forcibly took her in the kitchen-garden of one Roman, knocked-down her on the ground and committed forcible sexual

intercourse with her after removing her clothes. It is further alleged that when she tried to raise hue & cry, the accused/appellant gagged her mouth by his hand. Seeing someone coming on the spot, the accused/appellant fled away from there. Based on this FIR, offence under Section 376 IPC was registered against accused/appellant. The prosecutrix was sent for medical examination which was conducted by Dr. Sahodara Thakur (PW-9) on 17.1.07 vide Ex.P-11. She had referred the prosecutrix for further examination by the Gynaecologist and accordingly she was examined by Dr. Chhaya Tiwari (PW-13) vide Ex.P-24. The appellant was also medically examined by Dr. M.C. Patle (PW-10) who gave his report of Ex.P-12 opining him to be fully capable of having sexual intercourse. Ossification test of the prosecutrix was conducted by Dr. A.K. Sahu (PW-11) vide Ex.P-24 and according to his report, the prosecutrix was between 14 & 15 years of age. On completion of investigation, charge sheet was filed against the appellant for the offence punishable under Section 376 IPC followed by framing of charge by the Court below under that section.

3. The prosecution in order to bring home the charge levelled against accused examined 13 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. He has also taken the plea of alibi and in support thereof examined three defence witnesses namely Balla Nayak (DW-1), Arjun Nishad (DW-2) & Kamlesh Shukla (DW-3).
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellant as described above.
5. Learned counsel for accused/appellants submits that;-
 - on the date of incident the appellant was not in the village and had gone to Allahabad.

- as per prosecutrix herself, she was subjected to forcible sexual intercourse on the rough place but no injury was noticed on her back or other parts of the body.
 - there is no legally admissible evidence in support of the age of the prosecutrix showing her to be minor on the date of incident and therefore even if it is found that it is the appellant who committed sexual intercourse with the prosecutrix then she was a consenting party and as such he cannot be convicted under Section 376 of IPC.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that a very prompt named report was lodged by the prosecutrix i.e. within three hours of the incident, and there is no reason with the prosecutrix to falsely implicate accused/appellant. Medical evidence also supports the prosecution case in which not only injury was noticed on the private part of the prosecutrix but her hymen was also found torn. He further submits that the accused/appellant has tried to blow hot & cold at the same breath by taking two contradictory pleas i.e. plea of alibi and that the prosecutrix was a consenting party, which is not permissible in law. Lastly he submits that the prosecution has discharged its onus in establishing beyond reasonable doubt that the accused/appellant has committed rape on the prosecutrix and therefore the trial Court right in coming to the conclusion that the appellant had committed rape on the prosecutrix.
 7. I have heard learned counsel for the parties and perused the material available on record.
 8. The prosecutrix (PW-1) has stated that on the date of incident at about 7.00 p.m. she had gone to the house of Ramaiya Rawat to take milk, however, as the cow was not milked by that time and therefore said Ramaiya asked her to come later. When she was coming back to her

home on foot, accused/appellant met her on the way, caught hold of her hand, forcibly took her in the kitchen-garden of one Roshan Patil, knocked-down her on the ground and thereafter committed bad work with her after removing her clothes. While she was being subjected to sexual intercourse, Rupu Marar & Sonu Patil reached there and on seeing them, the accused/appellant fled away from the spot. Thereafter she came home with Rupu and narrated the entire incident to her father, mother & sister and then she went to the police station and lodged the report. She has further stated that her *sal/waar* was seized by the police vide Ex.P-2 and she had also consented for medical examination. She has further stated that her father is labour whereas her mother is mentally challenged lady. In the cross-examination this witness has stated that when she was knocked down by accused/appellant, she received abrasion injury on her back. She has further stated that she could not raise hue & cry because the accused/appellant had gagged her mouth.

9. Champalal Mandavi (PW-2) is the Head Master of the Primary School, Nevnara. He has proved the school admission register (Ex.P-5C) wherein date of birth of the prosecutrix has been recorded as 9.1.1993. This witness has further stated that he had issued the certificate of Ex.P-6 and that the said register was seized from him vide Ex.P-7. He has further stated that the entry in the said register was made on the basis of documents provided by the village Kotwar.
10. Tomanlal (PW-3) is the seizure witness of Ex.P-2 by which one green colour Salwar having stains like human sperm at many places was seized.
11. Shiva @ Sonu (PW-4), Bhuneshwar Prasad Pal (PW-5) & Rupu (PW-6) have not supported the prosecution case and turned hostile.
12. Durpati (PW-7) is the mother of the prosecutrix and she has stated that when the prosecutrix did not return for sufficient long time, she went to the

house of her sister-in-law Sushila in search of the prosecutrix and there she saw the prosecutrix coming and at that time she was crying. On being asked, the prosecutrix narrated the entire incident to her. In the cross-examination this witness has stated that the prosecutrix used to go to take milk in the morning and evening as well.

13. Shanti Bai Yadav (PW-8) is the person at whose house the prosecutrix had gone to take milk on the date of incident. This witness has stated that on the date of incident the prosecutrix had come to her house to take milk, however, as the cow was not milked by that time therefore she asked her to come after some time.
14. Dr. Sohadra Thakur (PW-9) is the witness who medically examined the prosecutrix vide Ex.P-10. According to this witness, she had noticed one abrasion of 1cm x 1/8 cm behind the right pinna, mild swelling over lower side of both labia majora, vagina was admitting only index finger fully with pain and no injury like abrasion, contusion or lacerated wound was present over thigh & groin region. She has opined that no definite opinion can be given about the sexual intercourse and referred the prosecutrix to the Gynaecologist for expert opinion.
15. Dr. M.C. Patle (PW-10) is the person who medically examined the accused/appellant vide Ex.P-12 and opined that he was capable of performing sexual intercourse.
16. Dr. A.K. Sahu (PW-11) is the Radiologist who conducted ossification test on the prosecutrix and opined vide report of Ex.P-14 that she is between 14 & 15 years of age.
17. K.M. Mishra (PW-12) is the investigating officer and he has duly supported the prosecution case.
18. Dr. Chhaya Tiwari (PW-13) is the Gynaecologist who examined the prosecutrix vide Ex.P-24 and opined that hymen was old torn, vagina

admits one finger easily and injury to hymen could be caused by hard & blunt object. In the Court statement this witness has clarified that hard & blunt object includes penis also and rupture of hymen may have taken place within 24 to 48 hours. She has further stated that rupture of hymen could be caused by forcible sexual intercourse.

19. Close scrutiny of the evidence on record makes it clear that on the fateful day when the prosecutrix was coming back to her home on foot from the house of one Ramai Rawat where she had gone to take milk, the accused/appellant met her on the way, caught hold of her hand, forcibly took her in the kitchen-garden of one Roshan and there committed forcible sexual intercourse with her. After the incident she returned home and disclosed the incident to her parents & sister who have duly supported version of the prosecutrix. Statement of the prosecutrix also gets corroboration from the FIR (Ex.P1) lodged by her within three hours of the incident. Medical evidence also supports the prosecution case, according to which mild swelling was noticed over lower side of both labia majora, vagina was admitting only index finger full with pain and rupture of hymen may have taken place within 24 to 48 hours by hard & blunt object which includes penis also. Report of FSL (Ex.P-20) confirms presence of human spermatozoa on the underwear of the prosecutrix. Nothing has been elicited by the defence as to why the appellant has been falsely implicated in this case and thus the stand of false implication taken by the accused/appellant is also not worth acceptance.

20. As regards the plea of alibi, it is considered as the weakest type of plea and therefore the same is required to be proved through exhaustive, cogent & reliable evidence. Further, it should be raised at the earliest time. In the present case, the earliest opportunity to raise the plea of alibi was when the appellant was taken into custody by the police or when the

charge was framed against him, but no such plea was taken by him at any such point of time. Had it been the case of the defence since beginning that on the date of incident the accused/appellant was not present in the village, suggestion in this regard would have been put to the prosecutrix, but nothing like has been done. Though the defence witnesses have stated that they along with accused/appellant had gone to Allahabad but any documentary evidence has not been produced in support thereof, rather the consistent & un-rebutted testimony of the prosecutrix prima facie proves involvement of accused/appellant in commission of offence in question. Thus the possibility that plea of alibi taken at the fag end of trial being an afterthought cannot be ruled out.

21. This apart, the plea of alibi has not been supported by any documentary evidence, rather the material available on record prima facie suggest involvement of the accused in the commission of offence. Thus the possibility that the plea of alibi taken at the fag end of trial being an afterthought cannot be ruled out.
22. True it is that age of the prosecutrix has not been proved as required under the law i.e. by examining the author of document of school admission register (Ex.P-5C) by which the age of the prosecutrix is sought to be proved. However, considering the fact that according to the report (Ex.P-14) of the Radiologist (PW-11) the prosecutrix is reported to be between 14 & 15 years of age, it can safely be presumed that at the time of commission of offence she was around 16 years of age and that being so, even it is held that at the relevant time the prosecutrix was a consenting party, it is of no help to the accused/appellant.

23. For the foregoing reason, this Court is of the considered opinion that the judgment impugned suffers from no infirmity or illegality and being so it is hereby maintained. The appeal, in other words, fails. It is dismissed as such.

Sd/-

(Pritinker Diwaker)
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