

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 198 of 2010**

Jageshwar Dhruva S/o Suman Dhruv, Aged 25 years, Resident of Bhilai, Police Station Gariaband, District Raipur, (Chhattisgarh).

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Gariaband, District Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Shri P.L.Swarnakar, Advocate.
For Respondent	: Shri Arun Sao, Deputy Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****23/12/2016**

1. This appeal by the convicted accused/Appellant is directed against the judgment dated 18.11.2009 delivered by the learned Additional Sessions Judge, Gariaband, District Raipur, in Sessions Trial No. 31 of 2009 whereby he convicted the accused/Appellant for having committed an offence punishable under Section 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 100/-. In default of payment of fine, the Appellant was required to undergo simple imprisonment for 10 days.

2. The prosecution story, briefly stated is that on 20.04.2009, when Smt. Kamla Bai (PW-2) returned to her house in village Majarkatta after finishing the work of labour, she found her daughter aged about 14 years missing from the house. The daughter is also alleged to be mentally infirm. The mother searched for the daughter and she came to know from the other villagers that they had seen her going alongwith the accused towards Nayatalab. At about midnight, the

prosecutrix came back to the village and disclosed that the accused had committed "Galat Kam" and thereafter, the FIR was lodged.

3. The prosecutrix was medically examined by Dr. B. Bara (PW-9). After medical examination and carrying out other investigation, the police filed a report under Section 173 CrPC against the accused-Appellant and charged him of having committed an offence of rape. He denied the charges and prayed for trial. After the trial, the accused-Appellant has been held guilty and has been convicted and sentenced, as aforesaid. Hence, this appeal.

4. It is urged by learned counsel for the Appellant that first of all, the prosecution has failed to prove that the prosecutrix was subjected to rape because the medical evidence does not support the case of the prosecution. In the alternative, it is submitted that even if there was any sexual intercourse, it was consensual in nature and since the prosecutrix was more than 16 years of age, the accused should have been acquitted.

5. On the other hand, learned counsel for the State/Respondent submits that the judgment of the learned trial Court is absolutely correct and calls for no interference.

6. Before dealing with the evidence, it would be proper to reiterate the legal position. By now, the law is well settled that in a case of rape, conviction can be based even on sole testimony of the prosecutrix as long as the testimony of the prosecutrix inspires confidence in the Court. If there is no reason to doubt the testimony of the victim, then it is not necessary to seek other corroborative evidence.

7. As far as the present case is concerned, from the evidence on record and the statement of the prosecutrix herself, it is apparent that she had gone along with the accused and in her statement, the prosecutrix has not stated a word

that she was forcibly subjected to sexual intercourse. She however states that she was subjected to sexual intercourse. It has also come in her evidence that the accused used to visit the house of the prosecutrix and both of them were known to each other prior to the date of occurrence. They had left the village and had gone near to the village pond and the prosecutrix had not raised any alarm. It is more than obvious that the prosecutrix had gone with the accused on her own.

8. Having held so, the next important question is what was the age of the prosecutrix on the date of occurrence. If she was below 16 years (since I have to apply the law before its amendment) then consent is immaterial and rape has been committed. However, if she was above 16 years, then the accused will have to be acquitted. As far as the prosecutrix is concerned, she in her statement has stated that she was aged 14 years. The only question put to her with regard to her age is that at the time of examination in the Court, she was 16 years.

9. Smt. Kamla Bai (PW-2), mother of the prosecutrix states that she does not know the age of her daughter. Narayan (PW-3), is the father of the prosecutrix. He has stated that he got his daughter admitted in Class I when she was aged about 7 years old and she joined Class II when she was 9-10 years old.

10. Relying upon this statement of the father, learned counsel for the Appellant submits that the age of the prosecutrix was above 16 years. I am not willing to accept this argument because we must remember that the prosecutrix belongs to that section of the society where nobody is sure of the age. The mother has very honestly stated that she does not know the age of her daughter. As far as her father is concerned, he also could not state the date of birth of her daughter but he just by guesswork has given certain number of years in a very casual fashion. In a case of rape, especially where the prosecutrix is alleged to be less than 16 years of age, the Court has to show some sensitivity and merely because the prosecutrix and her family belong to that deprived section of the society which is

uneducated and is very poor, is not a ground to just take their evidence in a mechanical manner and assess the age of the prosecutrix.

11. If there was no other evidence, then obviously the accused would have to be given the benefit. However, as far as the present case is concerned, there is evidence of Dr. B. Bara (PW-9). The Doctor has clinically examined the prosecutrix and found that the teeth in the mouth of the prosecutrix had not come out. She also found that her breast were not fully developed. She also got the radiological examination done and on the basis of radiological examination, she submitted her report that the age of the prosecutrix was about 14 years. She has not been cross-examined with regard to this radiological report at all. It is true that the radiological report is not exact but even then definitely, the prosecutrix was below 16 years. Therefore, even if the sexual intercourse was consensual in nature, the offence of rape is made out.

12. In view of the above discussion, the judgment of the learned trial Court is upheld and the appeal is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE