

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 381 of 2010**

Tasilo S/o Shri Indramani, Caste Ghasiya, Aged about 65 years, R/o village Kasdol, Police Station Saraipali, District Mahasamund, Chhattisgarh).

---- Appellant**Versus**

The State of Chhattisgarh, Through Station House Officer, Saraipali, District Mahasamund, Chhattisgarh.

---- Respondent

For Appellant	: Shri Raghavendra Pradhan, Advocate.
For Respondent	: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****18/11/2016**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 07.05.2010 delivered by the learned Sessions Judge, Mahasamund, in Sessions Trial No. 65 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. 5000/-. In default of payment of fine, the Appellant was required to undergo further simple imprisonment for six months.

2. The prosecution story, briefly stated is that on 23.07.2009 at about 10:00 am, the prosecutrix was sitting outside her house alone. It has been stated that on the date of alleged occurrence, the prosecutrix was aged 16 years. The Accused/Appellant, who at the relevant time was aged 65 years, came and grabbed the prosecutrix by hand, dragged her to his house, locked the door of the house and raped the prosecutrix. Thereafter, the Accused/Appellant gave the prosecutrix Rs. 10/- to keep quiet and not to tell anybody. However the victim

came to home and told her mother about the occurrence. Thereafter, a meeting of the village panchayat was called but when no effective result came out, the FIR (Exhibit P/1) was lodged next day.

3. Obviously, in a case of this nature, there is very little likelihood of there being any eyewitness. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the prosecutrix. However, there is an important caveat which is that the testimony of the prosecutrix must inspire confidence. Even though the testimony of the prosecutrix is not required to be corroborated, if her statement itself is not believable, then the Accused cannot be convicted.

4. In the present case, the prosecutrix appeared in the Court as PW-1. Her statement is that her mother had gone to the fields. Though, in the FIR, it was stated that she was sitting outside her house, in the statement in the Court, it is stated that she had gone to collect water. At that time, the Accused met her near the bore-well where there was a Neem tree. She was waiting for her mother under the Neem tree but the Accused dragged her to his house, took off her clothes and committed sexual intercourse with her. He then gave the prosecutrix Rs. 10/- and told her not to tell anybody as to what has happened. In the statement made in the Court, the prosecutrix other than saying that she was dragged to the house, has not stated a word with regard to any forceful act at the time of rape. The witness then denied that she had gone to the police station to lodge the FIR and she also stated that she had not marked her thumb impression on any document. At this stage, she was declared hostile. After she was declared hostile, she admitted the suggestion of the Public Prosecutor that she had been raped. She also admitted that she had told her mother in the evening that she had been raped and thereafter, her mother had called for a meeting. At this stage, she also stated that she had gone to the Police Station, Saraipali alongwith her mother.

Medical examination was conducted thereafter.

5. The aforesaid witness is totally uneducated. She has not attended the school even for a day. No documentary proof of her age has been placed on record. In her statement, she has admitted that she has stated her age to be 16 years only on the basis of what has been told to her by her parents. The mother has been examined as PW-2 and she has also not stated anything about the age of the prosecutrix. The Doctor (PW-6) did not conduct any ossification or dental tests to determine the age of the prosecutrix. She states that the prosecutrix was aged about 16 years but she could be above 16 years of age. In her medical report she has clearly stated that the sexual organs of the prosecutrix were well developed and she was fully grown up young girl. Therefore, the possibility of the prosecutrix being more than 16 years of age cannot be ruled out.

6. In the aforesaid view of the matter, it is necessary to decide whether the sexual act was consensual or not. In fact, the defence taken by the Accused was that the sexual act was consensual in nature. The prosecutrix in her cross-examination has admitted that her house is situated far away from the house of the Accused in a different *mohalla*. The occurrence is alleged to have taken place at 10:00 am in the month of July. In a village, somebody would be out at 10:00 am and it is very difficult to believe the version of the prosecutrix that she was either dragged by the Accused from her house or from the bore-well without her raising any alarm and without anybody coming to know about that. The prosecutrix, even as per statement of the Doctor (PW-6), is a well developed young girl. The Accused was aged about 65 years. If the prosecutrix would have struggled, then there would have been some injury marks both on the prosecutrix as well as on the Accused. There are no marks of injury relating to a struggle. The story of the prosecutrix is that when the Accused dragged her to his house, he shut and bolted the door. The Accused could not have done that while holding the mouth of

the prosecutrix. The prosecutrix has not stated that she was threatened that if she raises an alarm, the Accused would cause harm to her.

7. From the aforesaid facts, it appears that the prosecutrix did not raise any alarm at the time of occurrence. Therefore, possibility of the prosecutrix having gone with consent to the house of Accused, cannot be ruled out. Therefore, I am of the considered view that the learned trial court gravely erred in convicting the Accused only on the basis of testimony of the prosecutrix.

8. As held by me above, the conviction can be maintained on the sole testimony of the prosecutrix, but the testimony must inspire confidence and appear to be truthful. In this case, this does not appear to be a such case.

9. The judgment dated 07.05.2010 of the learned Sessions Judge, Mahasamund, in Sessions Trial No. 65 of 2009 convicting the Appellant under Section 376(1) IPC is set aside and the Accused-Appellant is acquitted of the charge. The Accused/Appellant is in jail. He be set at liberty forthwith unless required in any other case.

10. The appeal is allowed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE