

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.594 of 2010

Ramesh Raut, S/o Gorango Raut, Aged about 20 years, R/o Village Budamal, Police Station Budhen, District : Bargarh (Orissa) At present Resident of Village Podagarh, Police Station Saraipali, Mahasamund (Chhattisgarh)

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Saraipali, District Mahasamund (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Manoj Kumar Jaiswal, Advocate
For State/Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

28.11.2016

1. This appeal by the accused is directed against the judgment dated 3.7.2010 delivered by the Learned Sessions Judge, Mahasamund in Sessions Trial No.4 of 2010, whereby he held the accused/Appellant guilty 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.1,000/-, in default of payment of fine, to further undergo simple imprisonment for 2 months.
2. The prosecution story is that the prosecutrix (name withheld) was aged about 14 years on the date of occurrence. She left her house on 9.9.2009 at about 7:00 – 8:00 p.m. to collect vegetables from the house of her uncle. She did not return back. Thereafter, her mother Chhaya, PW-1 and Raidhar, PW-2 along with father of the prosecutrix searched for her and at about 1:00 a.m., the next morning, they found her in an under construction building of the Anganbadi Centre in the village. She complained that she had been raped by the accused.

Thereafter, First Information Report (Ex.P-1) was lodged on 11.9.2009 at 11:15 a.m. The Learned Trial Judge held that the prosecution has failed to prove the age of the prosecutrix. He, however, held that the story of the prosecutrix has to be believed and, therefore, convicted the accused/Appellant as mentioned above.

3. There can be no quarrel with the settled position of law that in a case of rape, the conviction of the accused can be based on the sole testimony of the prosecutrix. There is no need for corroboration of such statement. However, there is an important caveat that the statement of the victim must inspire confidence. If there is any reason to doubt the statement of the victim then the conviction cannot be based upon her sole testimony.
4. In the present case, the prosecutrix appeared in the witness box as PW-4. She stated that she left her house to collect vegetables from the house of her uncle. At that time, the accused, who was working in the village as a labourer, came from her behind and forcibly carried her away. He firstly carried her to the *Kothar* (Room) of one Pathru and from there he took her to the Anganbadi Centre which was under construction. According to the prosecutrix, the accused raped her there and after she was raped, she became unconscious and at about 1:30 a.m., her relatives came there and rescued her. In the meantime, the accused ran away. She states that when the accused tried to take her away, she raised an alarm, but he covered her face and prevented her from raising alarm. The statement of the victim has to be read in the context of the statements of the other witnesses.
5. Dr. Kiran Rohaledar, who did medical examination of the prosecutrix, was examined as PW-9. In her statement, she stated that the prosecutrix was habitual to sex. She has also stated that she did not find any marks of injury either on the body of the prosecutrix or in her

private part. There was no injury whatsoever on her person. This witness also took the vaginal swab of the prosecutrix. These were sent for forensic examination to the FSL, but the report of the FSL has not been placed on record.

6. The mother of the prosecutrix, Chhaya appeared in the witness box as PW-1. She stated that when she was serving dinner to her daughter (the prosecutrix), the daughter asked for vegetables. She replied that there is no vegetable then her daughter (the prosecutrix) went to the house of her uncle for getting vegetables. When her daughter did not return back then she went to the house of her brother-in-law to search for her daughter. When her daughter was not found at the house of the brother-in-law, then they all went to search for her daughter. They searched for her daughter in the village 2-3 times, but she was not found. When they went to the Anganbadi Centre of the village for searching her daughter, they found her (the prosecutrix) there. In the first part of her statement, the witness states that the accused was present at the Anganbadi Centre when these people reached there, but he ran away. However, the uncle of the prosecutrix, Raidhar, PW-2 has given the similar statement, but according to him, when they went to the Anganbadi Centre, the accused was not present there. The father of the prosecutrix has not been examined.
7. As far as the age of the prosecutrix is concerned, as noted above, even the Trial Court has come to the conclusion that there is no proof of the age of the prosecutrix. I have carefully gone through the record. I find that the prosecution has miserably failed to prove that the prosecutrix was below 16 years of age on the date of occurrence. In this regard, this Court is concerned with the law as it stood prior to the year 2013. Therefore, it was the duty of the prosecution to prove that the prosecutrix was below 16 years of age on the date of occurrence,

in which case, the consent of the prosecutrix is also immaterial. In this view of the matter, the prosecutrix will have to be considered to be more than 16 years of age.

8. This brings this Court to the most vital issue as to whether the prosecutrix was subjected to forcible sexual intercourse or not. No doubt, the prosecutrix has stated that she was subjected to forcible sexual intercourse, but her statement does not inspire confidence. She was moving to her uncle's house which was only a few yards away. This occurrence took place at 7:00 – 8:00 p.m. At that time, other villagers would be moving around in the village and people would be awake and, therefore, the prosecutrix could not be carried away by the accused without any resistance. There is no allegation that when she was raising alarm, she was threatened by the accused. The prosecutrix remained with the accused from 7:30 p.m. to 1:30 a.m., i.e., for 6 hours within the precincts of the village. The accused first took her to the *Kothar* (Room) of Pathru and then to the Anganbadi Centre and she could have raised alarm at some stage. Non-raising of alarm creates a doubt with regard to the testimony of the victim.
9. Another reason to doubt the testimony of the victim is that the FIR was lodged more than 36 hours after the occurrence took place. Assuming that the FIR could not be lodged at night, it should have been lodged, first thing next morning. The place of occurrence is only 4 kilometres away from the police station. If the prosecutrix had told her mother that she had been raped, her family members could have taken her to the police station early next morning. No explanation has been offered why they could not come to the police station early. Therefore, this also creates a doubt.
10. It appears that the prosecutrix went with the accused of her own free

will. She was habitual to sex and the police has failed to prove that the sexual activity in the present case was forcible in nature especially in view of the fact that there was not a single injury on the person of the prosecutrix. The age of the prosecutrix has not been proved and, therefore, benefit has to be given to the accused/Appellant.

- 11.** Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The accused/Appellant is acquitted of the charge framed against him. He is reported to be in jail. He is directed to be released forthwith, if not required in any other case.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE