

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 474 of 2013**

Dhruv Kuamr Nag S/o Banshi Lal Nag Aged About 23 Years R/o Gram
Machka PS Sihava, Distt. Dhamtari C.G.

---- Appellant**Versus**

State of Chhattisgarh Through PS Sihava Distt. Dhamtari C.G.

---- Respondent

For appellant	:	Ms. Sofia Khan, Advocate.
For Respondent/State	:	Ms. Shobha Kashyap, Dy. Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**O R A L J U D G M E N T****08/11/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 1-9-2011 passed by the Sessions Judge, Dhamtari in S.T. No. 24/2011 whereby and whereunder learned trial Court after holding the appellant guilty for commission of rape with the prosecutrix (name not mentioned) convicted him under Section 376 of the Indian Penal Code and sentenced him to undergo RI for 7 years and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo additional RI for 3 months.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 2-2-2010 at about 7 pm when prosecutrix P.W. 1 was standing on the road in front of her house, the accused/ appellant came, forcibly took her to the nearby field and after removing her clothes forcibly committed sexual intercourse with her and ran

away from the spot. As the parents of the prosecutrix were not in the house, the prosecutrix on account of fear went to her friend and slept there. On next day morning, she informed the incident to her mother and thereafter she along with her parents reached to the PS Sihava and lodged FIR Ex. P-1. Police registered crime No. 19/2010 for offence under Section 376 of the IPC against the appellant and investigated the matter. The prosecutrix was medically examined. Necessary school certificate was seized. Spot map was prepared. The accused was arrested and he was also medically examined so as to ascertain whether he was capable of committing intercourse. Statements of the witnesses were also recorded under Section 161 of the Cr.P.C. and after completion of investigation charge sheet was filed before the Judicial Magistrate First Class, Nagari, Distt. Dhamtari who registered the matter as Criminal Case No. 356/2010 and vide committal order dated 13-1-2011 committed the same for trial to the Court of Session, Dhamtari.

4. Learned trial Court framed charge against the appellant for offence under Section 376 of IPC and proceeded with the trial. The accused denied the charge and prayed for trial.

5. In order to prove the guilt of the appellant, the prosecution examined 8 witnesses. Statement of the appellant was recorded under Section 313 of the Cr. P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.

6. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the record of the trial Court.

8. Learned counsel for the appellant submits that she is not contesting the appeal against conviction of the appellant under Section 376, IPC. She is confining her argument only on the point of sentence. She further submits that the appellant was aged about 23 years at the time of incident. The prosecutrix and the appellant were known to each other. They were resident of same village. Both belongs to the same community. There is no criminal antecedent reported by the prosecution during trial and he is serving sentence since date of arrest i.e. 18-4-2011 thereby till date he has served sentence of 5 years, 6 months and 19 days. Prior to the incident he was labour and earned his bread anyhow. Th Court may for the adequate and special reason impose sentence of imprisonment for a term less than 7 year. He will not commit any offence after his release. His sentence may be reduced to the period already undergone by him.

9. Learned counsel for the State opposed the arguments advanced on behalf of the appellant and argued that looking to the age of the prosecutrix as she was about 16 years, the manner the said offence was committed by the appellant in absence of the parents of the prosecutrix, the trial Court while considering entire material awarded minimum sentence prescribed for the offence. Hence the appeal may be dismissed on all counts.

10. Learned counsel for the appellant has not argued on conviction part of the judgment. Even otherwise, on appreciation and perusal of entire evidence adduced by the prosecution before the trial Court, in the considered view of this Court, there is no illegality or infirmity in the impugned judgment of conviction of the trial Court. Hence the conviction of the appellant under Section 376 of the IPC is affirmed.

11. So far as quantum of sentence is considered, the Court below has awarded minimum sentence of 7 years. In the present case, the appellant has already served sentence of 5 years, 6 months and 19 days. He was a labour aged about 23 years residing in the same village and was of the same community. There is no criminal antecedent of the appellant reported by the prosecution prior to the incident. Considering the entire material available on record, this Court is of the considered view that as the incident was committed on 2-2-2010 and prior to Criminal Law (amendment) Act, 2013 for substitution of Section 376, IPC with effect from 3-2-2013 as per proviso of the then existing sub-section (1) of Section 376, the Court may for adequate and special reason to be mentioned in the judgment impose a sentence for a term less than 7 years, the sentence part requires interference and ends of justice would be served by sentencing the appellant for the period already undergone by him.

12. Consequently, the appeal filed by the appellant is allowed in part. Conviction of the appellant under Section 376 of the IPC is hereby affirmed. However instead of RI for 7 years, the appellant is sentenced to the period already undergone by him till date. Fine sentence is also maintained.

13. The appellant be released forthwith if not required in any other case and if he has deposited fine amount. If fine amount is not paid, he shall serve the sentence as per default clause mentioned in para 25 of the judgment of the trial Court.

14. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge