

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 639 of 2013**

Sanjay Bhatt S/o Let Santhosh Bhatt Aged About 27 Years R/o Ward
No 07 Jangal Para , Thana Nagri , Distt. Dhamtari C.G.

---- Appellant**Versus**

State Of Chhattisgarh S/o Through - PS, Nagri , Distt. Dhamtari C.G.

---- Respondent

For appellant	:	Mr. Aditya Khare, Adv.
For Respondent/State	:	Ms. Shobha Kashyap, Dy. GA.

Hon'ble Shri Justice Chandra Bhushan Bajpai**J U D G M E N T O N B O A R D****22/11/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 15-3-2013 passed by the Additional Sessions Judge, Dhamtari, Distt. Dhamtari in Sessions Trial No. 5/2013 whereby and whereunder learned trial Court after holding the appellant guilty for committing rape with the prosecutrix P.W. 1 (name not mentioned) aged about 5 years convicted the appellant under Section 376 of the IPC and sentenced him to undergo RI for 7 years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo additional RI for one year.
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 28-9-2012 P.W. 2 Rameshwari was in the house and at about 7 pm, accused/appellant came and took the prosecutrix P.W. 1 aged about 5 years with him to show idol of Lord Ganesh. Thereafter he did not come back.

Family members of the prosecutrix made a search of her and notice her weeping, oozing blood from her private part and also from nose, genitals were swollen, clothes were also blood stained. On being asked, the prosecutrix informed regarding the bad act committed by the accused/appellant. Thereafter the matter was reported to the Nagari police on 8.15 pm. P.W. 11 Dr. Mrs. Asha Tripathi after examining the prosecutrix opined that the prosecutrix was subjected to forcible intercourse, partial insertion of penis, the private part of the prosecutrix was ruptured. She was sent for MECOHARA, Raipur to stitch the wound of the genitals. Police arrested the accused/appellant. He was also examined by the doctor. 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. 212/2012 and vide order dated 3-1-2013 committed the matter for trial. Learned Additional Sessions Judge received the case on transfer, framed the charges under Section 376 of the IPC.

4. In order to prove the guilt of the appellant, the prosecution examined 12 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.
5. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.
6. I have heard learned counsel for the parties and perused the record of the trial Court.
7. Learned counsel for the appellant submits that the prosecutrix has not said anything against the accused/appellant. There is no

eye-witness. Chain of circumstances is not complete. On the basis of mere suspicion the accused/appellant may not be convicted. Further there are material omission and contradiction in the statement of P.W. 2 Rameshwari, grand mother of the prosecutrix which does not inspire confidence. Hence the appellant may be given benefit of doubt and he may be acquitted of the charges.

8. Per contra, learned counsel for the State duly supported the judgment of conviction and sentence passed by the trial Court and submits that as the prosecutrix was merely aged about 5 years, it is not expected from her to narrate the incident. But on the other hand, in her statement P.W. 2 Rameshwari has remained very firm from whom the accused/appellant had taken the prosecutrix to show idol of lord Ganesh. There is no reason to disbelieve this fact and thereafter the prosecutrix was found in a badly injured condition having injuries over the private part and also on nose. P.W. 11 Dr. Smt. Asha Tripathi duly supported the commission of crime. Looking to the grievousness of the injuries where the vaginal track and connected organs are ruptured, blood was oozing, she was referred to Medical College Hospital, Raipur for stitching the wound and also for further treatment, the prosecution has duly proved the offence. The prosecutrix was in the company of accused/appellant. No explanation is offered as required by the accused. Hence conviction and sentence awarded by the trial Court is fully justified.
9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during trial.

10. From perusal of the statement of prosecutrix, it appears that the prosecutrix admitted that the accused/appellant had closed her mouth and thereafter as she was not in a position to say other part of the incident, she was aged about 5 years, the trial Court has not examined her further and closed her examination. P.W. 2 Rameshwari, grand mother of the prosecutrix has categorically stated in her statement that the accused/appellant is resident of her ward. At about 7 pm the accused/appellant came and took the prosecutrix to show her idol of lord Ganesh and thereafter the prosecutrix was not traceable. The family members made a search of her. They noticed the prosecutrix in a badly injured condition, blood was oozing out and thereafter she lodged FIR Ex. P-1. Even after cross-examination of P.W. 2 Rameshwari at length, this witness remained very firm and nothing could be elicited so as to discredit her statement. The evidence of P.W. 11 Dr. Smt. Asha Tripathi and the MLC report Ex. P-19-A where Dr. has clearly opined regarding partial insertion of penis, rupture of vaginal track and other organs and other symptoms, corroborates the statement of P.W. 2 Rameshwari. The accused appellant offered no explanation regarding the above facts. He simply denied the entire facts in his statement under Section 313 of the Cr.P.C. and said that he is falsely implicated on account of suspicion.
11. Looking to the other evidence of the prosecution witnesses and the theory of last seen together, it was expected from the accused/ appellant to offer explanation under Section 106 of the Evidence Act, 1872 as to when he parted with the company of the prosecutrix and also the accused / appellant was required to

demonstrate this with the admissible evidence, which he fails to do. In these circumstances, the theory of presumption and last seen together cannot be wiped out on simply saying that that is wrong. More was required to demonstrate innocence. Though in the present matter there is no eye-witness but the prosecutrix had said that the accused/appellant had closed her mouth and after consideration of clinching and trustworthy statement of P.W. 2 Rameshwari and in absence of any explanation offered by the accused/ appellant, in the considered view of this Court, the trial Court has not committed any error in coming to the conclusion that it was the accused/appellant only who committed said offence and injured the private part of the prosecutrix. In the opinion of this Court, even in absence of any eye-witness or statement of prosecutrix regarding commission of rape by the accused/ appellant, the prosecution has been able to prove the offence against the appellant on the basis of statement of P.W. 2 Rameshwari and P.W. 11 Dr. Smt. Asha Tripathi. The argument advanced on behalf of the appellant that the appellant is convicted on the basis of suspicion only cannot be accepted in the light of statement of P.W. 2 Rameshwari and P.W. 11 Dr. Smt. Asha Tripathi.

12. After considering the entire facts and evidence, this Court is of the view that the trial Court has rightly convicted the accused/appellant for the offence hence the said conviction does not require any interference. As far as substantive jail sentence is concerned, the accused/appellant has been sentenced to undergo RI for 7 years which is minimum sentence prescribed under Section 376 sub-section (1) of the IPC prevailing at the

time of incident. Looking to the heinousness of the act of the accused/ appellant, sentence imposed cannot be said to be excessive.

13. Consequently, the appeal filed by the appellant being sans substance deserves to be and is hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge