

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3097 of 1998

- Sampat Dharvaiya aged about 22 years, s/o. Hiradas Dharvaiya, r/o. Chilfi, Police Station Chilfi, District Rajnandgaon (CG).

---- Petitioner

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh).

---- Respondent

For Appellant : Mrs. Renu Kochar, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

10-11-2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 12-10-1998 passed by the Additional Sessions Judge, Khairagarh (Link court Kawardha), Sessions Division Rajnandgaon (CG), in Sessions Trial No. 152 of 1997 wherein the trial court convicted the accused/appellant under Section 376 (2) (f) read with Section 511 of the IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.2,000/-, with default stipulations.
2. The case of the prosecution, in brief, is that the prosecutrix was of seven years of age on 18-12-1996 i.e., the date of offence. Prosecutrix was a student of Gyan Jyoti Vidya Mandir, Chilfi and she went to school on the date of incident and returned late. On

enquiry by her mother, she did not narrate the story, but when asked by her mother after scolding she narrated that accused/appellant who was working in the school restrained her and committed bad work with her. When father of the prosecutrix returned in the evening, the matter was reported to Police Station Chilfi. After completion of investigation, charge-sheet was filed against the accused/appellant and after completion of trial, the appellant was convicted and sentenced as mentioned above.

3. Learned counsel appearing for the accused/appellant submits as under:

(i)	That there is material contradiction and omission in the statement of the prosecutrix and she improved her version while stated in the court and no reliance can be placed on her.
(ii)	That there is inordinate delay of ten days in lodging the first information report and no explanation is offered by the prosecution for the said delay and the same is fatal for persecution.
(iii)	That the trial Court has not appreciated the evidence of other witnesses in its proper perspective resulted in miscarriage of justice.

4. As against the aforesaid submissions, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is

no illegality or infirmity in both the appeals warranting any interference by this Court.

5. I have heard counsel for the parties and perused the material on record.
6. Prosecutrix (PW/10) deposed that accused/appellant was a teacher in the school and she was a student of same school. She further deposed that accused/appellant and one other teacher namely Sudhir have committed bad work with her. When the Court clarified as to what was the work of the accused/appellant which is termed as bad work, she deposed that the accused/appellant tied her, he opened his penis and touched her vagina with his penis. Version of this witness is unshaken during cross examination and nothing could be elicited after searching cross examination in favour of the accused/appellant. Version of this witness is again supported by the version of her mother Trilok Bai (PW/9) and father Krishna Kumar Janghel (PW/8) to whom the prosecutrix narrated the story. Version of these witnesses is unshaken during cross examination and from their version it is established that prosecutrix narrated the story to them.
7. Dr. Smt. L.D. Jindani (PW/11) examined the prosecutrix and found swelling of labia minora and labia majora of the prosecutrix and pain on the same part. She did not opine as to whether intercourse was committed or not. PW/1 Ganesh Manikpuri is a witness who assisted the prosecution. PW/4 S.L. Baachkar is the Doctor who examined the accused/appellant. PW/5 Ku. Mamta

Trivedi is a teacher of Gyan Jyoti Vidya Mandir and proved the date of birth of the prosecutrix which is 1-10-1989.

8. In the present case, date of incident is 18-12-1996 and looking to the date of birth of the prosecutrix, she was aged about seven years and two months. It is true that there are minor contradictions in the statements of the prosecution witnesses but the same is not sufficient to throw over board the prosecution case. As the witnesses have been examined after lapse of time and there is limit of memory of a person, the same cannot be equivalent to tape- recorder. True it is that there is delay in lodging the first information report but it happens in cases like the present case, in such case honour of family is involved, therefore, members of the family move slow in publishing or reporting the matter. The report was made only after consultation with father and when decided that report should be made, thereafter the matter was reported. There is nothing on record that either the prosecutrix or their parents have grudge against the accused/appellant to rope him in false charge. Version of these witnesses inspiring confidence and the court can act on it. The trial Judge convicted the accused/appellant for offence under Section 511 of the IPC i.e., for attempting of rape and the same is substantiated by the evidence adduced by the prosecution. The finding arrived at by the trial Court is not liable to be interfered with invoking jurisdiction of the appeal and the conviction under Section 511 of the IPC is hereby affirmed.

9. Heard on sentence.

No minimum sentence is prescribed for offence under Section 511 of the IPC. Accused/appellant was in custody from 21-1-1997 to 12-1-1998, from 12-10-1998 to 24-1-2002 and then from 14-9-2017 till date. Custodial period comes out to be nearly four years and five months.

10. Considering the fact that the offence took place in the year 1998 i.e., 19 years back and looking to the detention period of the appellant, this court is of the opinion that ends of justice would be served if the sentence of the accused/appellant is reduced to the period already undergone while maintaining the fine amount. Now the accused/appellant is sentenced to the period already undergone by him for offence under Section 511 of the IPC. The fine amount shall remain intact. The accused/appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

11. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju