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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1893 of 1999

Judgment Reserved on : 10.8.2017

Judgment Delivered on : 29.8.2017

Sudhir Ram, aged 20 years, S/o Moti Ram, Caste Uraon, Occupation Cultivator, R/o Gram Pandari Pani, P.S. Narayanpur, District Jashpur Nagar (MP) (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Narayanpur, Tahsil Kunkuri, District Jashpur Nagar (MP) (now Chhattisgarh)

--- Respondent

For Appellant	:	Shri Goutam Khetrapal, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.5.1999 passed in Sessions Trial No.163 of 1998 by the Additional Sessions Judge, Jashpurnagar convicting the accused/Appellant under Section 376 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 2 years and to pay fine of Rs.2,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 12.5.1998 at about 2:00 p.m. a written report (Ex.P-2) was submitted by the prosecutrix (PW-2), a minor girl aged about 13 years, alleging that on 17.9.1997, the accused/Appellant enticing her that he will marry her and also threatening her, took her to his house at Village Pandari Pani and kept her there for 3 days. During her stay at his

house, by threatening her, he forcibly committed sexual intercourse with her many times. Thereafter, he left her there and fled to Raigarh. Then she returned her house. On 7.5.1998, she went to Village Lodha Amba with her uncle to attend the marriage of Rameshwar in the night. The accused/Appellant caught her there also and took her towards the jungle and committed sexual intercourse with her in the jungle twice. He left her in the next morning threatening her that if she discloses the incident to anyone, he will kill her. When he was taking her with him, Nirmala Bai (PW-8) saw them. After her return to her house, she informed about the incident to her mother and uncle Ramkumar. When her father returned to home, she also informed him about the incident. Thereafter, she submitted the said written report in Police Station Narayanpur. On the basis of the written report, First Information Report (Ex.P-3) was registered. During investigation, mark-sheet (Ex.P-4) of the prosecutrix was seized from her father Sunuram (PW-3). The prosecutrix was medically examined by Dr. Mrs. Jyoti Mani Minj (PW-5), who gave her report (Ex.P-6). After completion of the investigation, a charge-sheet was filed by the police against the accused/Appellant for offence punishable under Sections 376 and 506 of the Indian Penal Code. Charge under Section 376 of the Indian Penal Code was framed by the Trial Court.

3. To hold the accused/Appellant guilty, the prosecution examined 8 witnesses in support of its case. Statement of the accused/Appellant was also recorded under Section 313 Cr.P.C. in which he denied the charge framed against him and pleaded innocence and false implication in the case.
4. After hearing the parties and appreciation of the evidence available

on record, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment.

5. Learned Counsel appearing for the Appellant submitted that the prosecutrix, on the date of incident, was alleged to be below 16 years, but the evidence available on record regarding her age is not very convincing. The prosecution did not conduct ossification test. Therefore, the prosecution has not been able to prove that the prosecutrix, on the date of incident, was below 16 years. In view of the statement of the prosecutrix and that of her father, the mark-sheet (Ex.P-4) of the prosecutrix cannot be considered to be reliable. The incident alleged to have taken place between 17.9.1997 and 7.5.1998, but the report was belatedly lodged on 12.5.1998. The story narrated by the prosecutrix is, thus, very suspicious. Under the facts and circumstances of the case, the impugned judgment is manifestly erroneous and perverse and the Appellant is, therefore, liable to be acquitted.
6. Per contra, Learned Counsel appearing for the State/Respondent supported the impugned judgment and submitted that the finding of conviction recorded by the Court below is strictly in accordance with law and there is no infirmity in the judgment impugned.
7. I have heard Learned Counsel appearing for the parties and perused the entire record minutely.
8. The prosecutrix (PW-2) has deposed that one day in the last year (her statement was recorded on 18.3.1999) she had gone to the house of Balsai for drinking water. There the accused met with her and threatened her that if she does not accompany him he will kill

her. Thereafter, the accused took her to his house by catching her hands and kept her there for three days and three nights keeping the door of his house locked and there he committed sexual intercourse with her without her consent during the said period of her stay. Thereafter, when the prosecutrix came to know from other persons that the accused had fled to Raigarh, then she ran away from the house of the accused and went to her house and narrated her mother about the incident. She has further deposed that after sometime she went to Village Lodha Amba with her uncle Ramkumar and Nirmala Bai (PW-8). From there also, the accused took her to jungle and kept her there for the whole night and committed sexual intercourse with her there two times and threatened her that if she discloses the incident to anyone, he will kill her. After return, she narrated the incident to her father and Nirmala Bai (PW-8). Thereafter, she went to the police station along with her father and uncle and submitted the written report (Ex.P-2).

9. Sunuram (PW-3), father of the prosecutrix has corroborated the above statement of the prosecutrix and stated that after returning from Village Belsunga her daughter (the prosecutrix) narrated him that the accused had committed wrong with her at Village Pandari Pani and Lodha Amba. Thereafter, they discussed the matter and went to the police station for lodging the report.
10. Nirmala Bai (PW-8) has not supported the above story of the prosecution. She has deposed that she does not know the prosecutrix nor was she aware of the incident.
11. Dr. Smt. Jyoti Mani Minj (PW-5) has deposed that on 13.5.1998,

she had medically examined the prosecutrix and found that no injury was present on the internal or external part of the body of the prosecutrix. Hymen of the prosecutrix was old torn. Two fingers were easily inserting into the vagina of the prosecutrix without pain. The doctor has opined that the prosecutrix was habitual to sexual intercourse.

- 12.** The prosecutrix (PW-2) has admitted that when she stayed at the house of the accused at Village Pandari Pani for three days, the parents of the accused were also present at the house. In paragraph 7 of her cross-examination, she has further admitted that during her above-stated stay for three days, she used to go to agricultural farm to attend the call of nature. In paragraph 8 of her cross-examination, when she was asked why she did not try to come out of the clutches of the accused during the said period, then she replied that she was unable to explain any reason therefor. She has further admitted that Sibbo, Ranjit, Gunjan, Nabo and Dharmdeo, residing near the house of the accused, were acquainted with her, but she did not disclose anything to them about the incident. Had the accused kept her with him at his house against her will and committed sexual intercourse with her without her consent, at the time of her going out of the house of the accused to attend the call of nature, she had ample opportunity to disclose the incident to those neighbours and other residents of the village of the accused and to flee from there, but she did not do so.
- 13.** In paragraph 10 of her cross-examination, the prosecutrix (PW-2) has stated that at Village Lodha Amba when the accused was taking her towards jungle, Nirmala Bai (PW-8) had seen her with the accused. She has further admitted that since Nirmala Bai (PW-

8) had seen her with the accused, she narrated her parents about the incident. She has further admitted that had Nirmala Bai (PW-8) not seen her with the accused, she would not have reported the matter in the police station.

14. From the admissions made by the prosecutrix (PW-2) and the other evidence on record, it is established that the sexual intercourse committed by the accused with the prosecutrix was not against her will, but it was committed with her consent.
15. In the instant case, the accused has been convicted under Section 376 of the Indian Penal Code holding the prosecutrix minor. However, from the record, it appears that there is no conclusive proof or legal admissible evidence in relation to her age which could suggest that on the date of incident she was minor. Though oral statements have been made by the prosecutrix (PW-2) and her father Sunuram (PW-3) in which they have stated the age of the prosecutrix to be 13 years. Mark-sheet (Ex.P-4) of 5th Standard (Primary School Examination Certificate) of the prosecutrix has been seized from her father which shows that the date of birth of the prosecutrix is 6.7.1985. It is a settled legal position that the date of birth mentioned in the school register or any such document has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. Merely proof of such documents would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Sunuram (PW-3), father of the prosecutrix has not stated anything to show that he had got the date of birth of her daughter (the prosecutrix) registered in the school register at the time of her admission. In these circumstances, the date of birth, as

mentioned in the mark-sheet (Ex.P-4), in the present case, has no probative value and the same cannot be accepted. Rather the medical evidence shows that the prosecutrix was found to be habitual to sexual intercourse and her hymen was old torn.

- 16.** As per the prosecution story, the incident took place between 17.9.1997 and 7.5.1998. The FIR was lodged on 12.5.1998. In the FIR, the age of the prosecutrix is mentioned as 13 years. The prosecutrix (PW-2) and her father Sunuram (PW-3) admitted that the prosecutrix is the eldest daughter of Sunuram. Statement of Sunuram (PW-3) was recorded on 18.3.1999. At the time of recording of his statement, the apparent age of Sunuram (PW-3) is mentioned as 42 years. In paragraph 6 of his cross-examination, Sunuram (PW-3) has stated that his marriage took place before 20-25 years. He further stated that after 3 years of his marriage the prosecutrix (PW-2) took birth. If the version of Sunuram (PW-3) is accepted then the only fact which reveals is that before 20-25 years of 18.3.1999 (when his statement was recorded in the Court), Sunuram (PW-3) would have got married between the years 1974 and 1979. As per his statement, the prosecutrix took birth after 3 years of his marriage, that is to say, she took birth between the year 1977 and 1982. In this case, as per the prosecution story, the incident took place between the years 1997 and 1998. Therefore, on the date of incident, the prosecutrix had certainly attained the age of 16 years. In view of the foregoing, the Appellant/accused deserves to be given benefit of doubt.
- 17.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.

18. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE