

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 975/2008**

(Arising out of judgment dated 3-1-2008 in Sessions Trial No. 28/2007
passed by learned Addl. Sessions Judge, Dhamtari)

Jitendra son of Maniram caste Halba, age 24 years, R/o. Village
Marvan Raighar (Orissa) present village Gadhiyapara (Bhiter
Ras) P.S. Sihava, Distt. Dhamteri (CG)

----Appellant**Versus**

State Of Chhattisgarh through P.S. Sihava, Distt. Dhamteri (CG)

---- Respondent

For appellant	:	Mr. Mirza Kasar Baeg, Adv.
For Respondent/State	:	Mrs. M. Asha, Panel Lawyer.

Judgment on Board**09/12/2017**

1. In this Criminal Appeal, the challenge is levied to the judgment of conviction and order of sentence dated 3-1-2008 passed by the Addl. Sessions Judge, Dhamtari in Sessions Trial No. 28/2007 whereby and whereunder the appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code, 1860 (hereafter called as 'IPC') and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 500/-, in default, to further undergo RI for 50 days.
2. In brief, prosecution story is that at the time of incident, the prosecutrix was minor. On 2-4-2007 the prosecutrix had gone to the house of one Kishan Yadav along with her parents. At about 9 pm the appellant approached to the prosecutrix saying that he had some work with her. When she and the appellant reached near cow ranch then the appellant committed rape with her. On

3-4-2007 the prosecutrix lodged the report in PS Sihava. After completion of investigation, charge sheet was filed against the appellant. After completion of the trial, the trial Court convicted and sentenced him as aforesaid.

3. A report dated 2-11-2017 from the office of Superintendent, Central Jail, Bilaspur has been received as per which the appellant has been released on 22-9-2012 on completion of sentence.
4. Learned counsel for the appellant submits that there is no evidence against the appellant. The appellant is innocent and has been falsely implicated. Hence the appeal may be allowed and he be acquitted of the charge.
5. Per contra, learned State counsel supported the impugned judgment of conviction and order of sentence and submitted that the appellant has rightly been convicted and sentenced on the basis of the evidence available on record.
6. As per MLC report Ex. P-14, Dr. Suman Tirkey had examined the prosecutrix.
7. As per alleged report Ex. P-9, P.W. 13 Dr. G.R. Agrawal had examined the appellant and opined that smegma was absent from corone glandis. He was competent to commit sexual intercourse. As per alleged RFSL report Ex. P-21, in Article A- underwear of prosecutrix, Article B-slide, Article B-1- Slide and Article C- Half pant of the appellant, semen and sperm were found present. As per the photo copy of the Dakhil Kharij register Ex. P-6 and photo copy of Halafnama Ex. P-7, date of birth of the prosecutrix is 7-1-1993.

8. P.W. 5 prosecutrix in para 1 of her statement on oath states that near cow ranch the appellant had committed sexual intercourse with her.
9. P.W. 1 Rupesh Gond in para 1 of his statement on oath states that the prosecutrix was going ahead and the appellant was following her.
10. P.W. 3 Rohit Gond in para 1, 2 and 4 of his statement on oath states that prosecutrix had told him that the appellant had committed sexual intercourse with her. The appellant had also told that he had committed wrong. He had got admission of the prosecutrix in school at the age of 5 years.
11. P.W. 4 Sukali Bai Gond in para 1 of her statement on oath states that the prosecutrix had told her that near the cow ranch, the appellant had committed rape with her.
12. P.W. 6 Bohran Gond in para 1 of his statement on oath states that in the meeting both the prosecutrix and the appellant had told that they were absent in the night.
13. P.W. 7 Ashwani Gond in para 1 and 2 of his statement on oath states that Rupesh told him that the prosecutrix and the appellant had disappeared from the house of marriage. The prosecutrix had told him that the appellant had committed sexual intercourse with him near cow ranch.
14. P.W. 8 Ramesh Gond in para 3 of his statement on oath says that the prosecutrix had told that the appellant had committed sexual intercourse against her wish.
15. P.W. 9 Guhari Ram Gond in para 3 of his statement on oath says

that the prosecutrix had told him that the appellant had committed sexual intercourse with her forcibly.

16. By the alleged seizure Ex. P-4 one underwear has been seized from the prosecutrix. As per alleged seizure Ex. P-9, one half pant was seized from the appellant. As per seizure Ex. P-13, in two sealed packets, slides were seized from constable Ishwar Singh Thakur.
17. Looking to the oral evidence of above witnesses coupled with seizure of undergarments and slides and the RFSL report Ex. 21, this Court finds that the trial Court has not committed any error in convicting and sentencing the appellant as mentioned above.
18. Thus the appeal being devoid of substance deserves to be and is hereby dismissed.
19. As the appellant has already been released from jail on completion of his sentence, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge

