

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRIMINAL APPEAL NO. 892 OF 2008**

Vishnu Kumar, S/o Siyaram Dhruv, aged about 20 years, R/o Village-Haradula, Police Station- Charama, District North Bastar, Kanker (C.G.)

**... Appellant**

**versus**

State of Chhattisgarh, through Station In-charge, Katekalyan, District South Bastar, Dantewada (C.G.)

**... Respondent**

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|----------------------|---|----------------------------|
| For Appellant        | : | None present.              |
| For Respondent-State | : | Ms. M. Asha, Panel Lawyer. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**11/11/2017**

1. The present is a jail appeal preferred by the Appellant assailing the judgment of conviction and sentence dated 4.9.2008 passed by the Sessions Judge, South Bastar, Dantewada, in Sessions Case No. 168 of 2007.
2. Vide the impugned judgment, the learned Sessions Court, has convicted the Appellant for the offence punishable under Section 376(1) of IPC and sentenced him to undergo R.I. for 7 years with fine of Rs.500/- and in case of default of payment of fine amount, he was further ordered to undergo additional R.I. for one month.
3. Case as per the prosecution in brief is that an FIR (Exhibit P-1) was lodged on 26.2.2007 wherein it was alleged that the Prosecutrix in the instant case, aged around 13 years, was subjected to rape by the Appellant on the intervening night of 25<sup>th</sup> & 26<sup>th</sup> of February, 2007.
4. After investigation, a criminal case was registered against the Appellant and the matter was put to trial before the Sessions Court, South Bastar, Dantewada, vide Sessions Case No. 168 of 2007.

5. During trial, in all, 7 witnesses were examined on behalf of the prosecution. PW-1 is the Prosecutrix. PW-2, Masa, is the Peon of the Hostel where the incident had occurred. PW-3, Paiké *alias* Lata, a minor, is another inmate of the said Hostel and PW-7, Dr. (Smt.) Anita Gangesh, is the doctor who had examined the Prosecutrix so as to establish the Prosecutrix being subjected to sexual intercourse.

6. After conclusion of the trial, the learned Sessions Court, vide the impugned judgment, convicted the Appellant for the offence punishable under Section 376(1) of IPC and ordered him to undergo the sentence as mentioned in the preceding paragraph.

7. It is this judgement of conviction and sentence which has been assailed by the Appellant in the present appeal.

8. Though the brief was allotted to a Panel Lawyer of the High Court Legal Aid Committee, but since the allotted Panel Lawyer was not present in the Court, this Court, considering the seniority of the matter, thought it proper to take the assistance of Shri Anand Kumar Gupta, who is also a Panel Lawyer of the Legal Aid Committee and present in the Court, for assisting the Court in the disposal of this appeal.

9. Shri Anand Kumar Gupta, after perusal of record and the evidence which have come on record, submitted that it is a case where there is no sufficient evidence on behalf of the prosecution to establish the charge levelled against the Appellant. He further submits that the Appellant seems to have been falsely implicated in the instant case. He next submitted that from the factual matrix of the case it appears that the Prosecutrix was also a consenting party to the alleged act. He thus prayed for the setting aside of the impugned judgment.

**10.** Per contra, Ms. M. Asha, Lawyer, appearing for the State, opposing the appeal, submits that the case of the Prosecutrix has been duly proved and established by the prosecution by leading cogent and strong evidence to establish each of the acts committed by the Appellant.

**11.** Having considered the submissions put forth on either side and on perusal of record, what is paramount to be seen is the statement of the Prosecutrix, PW-1. The Prosecutrix in her statement before the Court below has narrated the incident as it is as she had narrated before the police authorities while lodging the FIR. There appears to be a clear consistency in the stand taken by the Prosecutrix both at the time of lodging of the FIR as also during trial before the Court below.

**12.** The statement of the Prosecutrix also stands corroborated from the evidence of PW-3, Paik *alias* Lata, an eight years old minor girl, who was also an inmate of the Hostel where the Prosecutrix was put. She (PW-3) has also proved the case of the prosecution so far as the Prosecutrix been held back by the Appellant and closing of the door and confining the Prosecutrix inside the room for a pretty long time by the Appellant.

**13.** Also relevant is the evidence of PW-2, Masa, a Peon of the said Hostel, who at the time of incident had gone to answer the nature's call as he was suffering from loose motions on the said date and was going to the toilet regularly. At the relevant point of time when he was returning after answering the nature's call, he had found the door locked and the other inmates of the Hostel outside the room. He immediately broke open the door and found the Appellant leaving the room and the Prosecutrix crying, the Prosecutrix immediately narrated the entire incident to Masa (PW-2) who later informed the higher authorities and also took the Prosecutrix for lodging the FIR.

**14.** Equally important is the evidence of PW-7, Dr. (Smt.) Anita Gangesh, who has also deposed before the Court below to the effect that there is a positive report of the Prosecutrix, a minor girl, aged around 13 years, being subjected to sexual intercourse.

**15.** In the aforesaid factual matrix of the case, this Court is of the opinion that the finding of the guilt by the Court below does not seem to be erroneous or contrary to the evidence which have come on record.

**16.** The appeal thus being devoid of merits the same deserves to be and is accordingly dismissed.

**17.** From perusal of record, it appears that the Appellant was arrested on 2.3.2007 and since then he was continuously in jail till the date of judgment of conviction i.e. 4.9.2008 and thereafter also there is no order showing the sentence of the Appellant having been suspended. Thus, in all probability, the Appellant must have completed his entire sentence and must have been released from jail. In view of the same, this Court is of the opinion that no further step is required to be taken in the instant case.

**18.** This Court renders a word of appreciation to Shri Anand Kumar Gupta, Advocate, for rendering his valuable assistance to this Court in the disposal of the appeal.

Sd/-  
**(P. Sam Koshy)**  
Judge