

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1158 of 2001

- Fransis Uranv, S/o. Ram Pyare Uranv, Aged about 20 years, R/o. village Rajauri (Aamapara) PS Sitapur, District Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	: Shri Manoj Mishra, Advocate
For Respondent/State	: Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

24/11/2017

This appeal has been preferred against the judgment and order dated 19.11.2001 passed by the Sessions Judge, Ambikapur in Sessions Trial No. 117/2001 convicting the accused/appellant under Sections 376,366 and 363 IPC and sentencing him to undergo RI for seven years and to pay fine of Rs. 6,000/- u/s. 376; to undergo RI for three years and to pay fine of Rs. 2,000/- u/Ss. 366 and 363 plus default stipulations.

2. As per prosecution case about 10 months prior to 13.12.2000, prosecutrix was allured and taken by the appellant to nearby thrashing field and there she was subjected to rape by the accused/appellant. Prosecutrix and the appellant were seen by the mother of the prosecutrix and on seeing her, they fled away from the spot. After the incident, prosecutrix and appellant used to meet on number of

occasions and both of them visited several places. During this period they had physical relations and settled at village Bandana and lived for about three months. In the meanwhile, written report Ex.P-5 (undated) is said to have been lodged by father of the prosecutrix Munshi Ram (PW-2) making allegation of rape against the appellant. Based on this written report FIR (Ex.P-6) was registered against the appellant on 05.01.07 under Sections 376, 366 and 363 IPC. Prosecutrix was medically examined on 06.01.01 vide Ex. P-11 A by Dr. Smt. S.P.Jaiswal and she opined that there were no external injuries found on the body of prosecutrix and the secondary sexual organs were fully developed. She has stated that prosecutrix was habitual to sexual intercourse and for determination of age she was referred to radiologist. As per the report of Radiologist (Ex.P-18), age of the prosecutrix was 19 years. Further the school admission register Ex.P-12 was also filed by the prosecution for determination of the age of the prosecutrix and as per the said document date of birth of the prosecutrix is 04.04.84 and according to which on the first date of offence, prosecutrix was aged about 15 years and 11 months. After filing of the charge sheet, trial Judge has framed charge against the appellant under Sections 363,366 and 376 IPC.

3. So as to hold the accused/appellant guilty, the prosecution has examined 7 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. By the judgment impugned the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the

judgment. Hence this appeal.

5. Contention of the counsel for the appellant is that :

i) there is inordinate delay in lodging the report by father of the prosecutrix.

ii) no report was lodged by the prosecutrix.

iii) delay in lodging the report has not been explained by the father of the prosecutrix and the medical report also does not support the prosecution case.

iv) there is no legally admissible evidence showing the prosecutrix to be minor and the school admission register has not been proved as required under the law.

v) As per radiologist, age of the prosecutrix is 19 years and therefore it can easily be said that the prosecutrix was major.

vi) for 8-9 months prosecutrix had visited several places along with the appellant without offering any protest and thus she was a consenting party and it cannot be said that she was subjected to rape by the appellant.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. Prosecutrix (PW-1) has stated that for attaining literacy to read and write she had gone to her brother's house where the accused/appellant was also present and when she was returning to her house, accused/appellant caught hold of her, dragged towards the

thrashing field and forcibly committed rape on her. She has stated that as she did not reach home, her mother came searching for her and saw her along with the appellant in objectionable condition. She has stated that on seeing her, the appellant fled away from the spot. She has further stated that the accused/appellant promised her of marriage and then took her to several places including his relatives house and there also appellant had physical relations with her. She has stated that they had also gone to her maternal aunt and stayed there. She has stated that her father lodged the report and based on which the police took her and was medically examined by the doctor. From cross-examination of this witness it is apparent that the prosecutrix had enough opportunity to come out of the clutches of the appellant but instead of that she remained with him and was a consenting party to the act of the appellant. Munshiram (PW-2) is father of the prosecutrix who lodged the written report. G.L. Shrivastava (PW-3) is the ASI who has done the investigation. Dr.M.K.Jain (PW-4) is the radiologist who had done the X-ray and gave his report Ex.P-18 wherein he has opined that the age of the prosecutrix is 19 years. Smt. Shashi Prabha Jaiswal (PW-5) is the doctor who has medically examined the prosecutrix and opined that there were no external injuries found on the body of prosecutrix and the secondary sexual organs were fully developed. She has stated that prosecutrix was habitual to sexual intercourse. Benuram (PW-6) is the headmaster who has brought the school admission register in which age of the prosecutrix was 4th April 1984. However there is no legally admissible evidence as to on what basis the entry was made in the school admission register.

8. Close scrutiny of the evidence makes it clear that the prosecutrix was a consenting party. Further, from the medical report also it is

apparent that there were no external injuries found on the body of prosecutrix and the secondary sexual organs were fully developed and the prosecutrix was habitual to sexual intercourse. Moreover, there was inordinate delay in lodging the FIR. During this period she roamed around various places with the accused and she admitted that she had enough opportunity to raise cries but she never made any attempt. Even as per radiologist the age of the prosecutrix was 19 years.

9. Taking the cumulative effect of the facts and circumstances of the case, we are of the view that the trial court has erred in law in convicting the accused/appellant. The prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question. The conviction of the accused/appellant under Sections 376, 363 and 366 IPC is set aside and he is acquitted of the said charges.

10. Appeal is thus allowed. Appellant is reported to be on bail therefore no further order is required.

Sd/-

(Pritinker Diwaker)
Judge