

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 570 of 2008**

- Ramu Chauhan, S/o Budhram Chauhan, age 35 years, R/o Village & Police Station Kartala, at present Patharripara, Rampur, Korba, District Korba (Chhattisgarh)

---- Appellant**Versus**

- State Of Chhattisgarh, through Station House Officer, Police Station Kotwali, District Korba (Chhattisgarh)

---- Respondent

For Appellant : Shri Dharmesh Shrivastava, Advocate.
For Respondent : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****24/07/2017**

1. The appellant stands convicted for committing offence under section 376(2)(f) of IPC and has been sentenced to undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo RI for 10 months. Out of the fine amount of Rs.10,000/-, a sum of Rs.8000/- has been directed to be paid to the prosecutrix by way of compensation.
2. Admittedly, the prosecutrix aged about 10 years is the appellant's niece (elder brother's daughter). After the death of her father, the

prosecutrix became orphan, therefore, the appellant gave her shelter and brought her to his house where the appellant, his wife and the prosecutrix were residing together. They belong to lower social strata, therefore, they used to sleep in one room where the appellant and his wife would sleep on the bed and the prosecutrix used to sleep on the floor.

3. FIR (Ex.P-1) was lodged by the appellant's wife on 14-1-2007 alleging that the appellant has been committing rape regularly with the prosecutrix for last one month by criminally intimidating her that if she discloses this fact to anybody, she and her aunt (appellant's wife) would be murdered. However when the prosecutrix felt severe pain in her private parts, she narrated the whole incident to her aunt Anita who lodged the FIR. The prosecutrix was sent for medical examination wherein the doctor did not accord any definite opinion in her report (Ex.-P/7). The trial Court has convicted the appellant on the basis of testimony of the prosecutrix (PW-9), Anita Bai Chouhan (PW-6), Vijay Laxmi Naidu (PW-1) and Chamarin Bai (PW-10).
4. Shri Dharmesh Shrivastava, learned counsel for the appellant would submit that the medical report is not supporting the prosecution, therefore, merely on the basis of statement of the prosecutrix and her aunt (appellant's wife), the trial Court should not have convicted the appellant.

5. Per contra, learned State Counsel would submit that there is no reason why the prosecutrix, aged 10 years, who happens to be the niece of the appellant, would falsely implicate him. According to him, the prosecution has led reliable and unimpeachable evidence to bring home the charges and there being no infirmity in the judgment, the appeal deserves to be dismissed.
6. The entire appreciation has to be made keeping in view the age of the prosecutrix, who was aged about 10 years at the time of incident. She has been examined before the trial Court as PW-9. At the time of examination, she was aged about 12 years, therefore, after the preliminary query, the trial Court administered oath and proceeded to record her statement. In the very first paragraph, she would state that after the death of her father, her mother had performed second marriage, therefore, she resides with her aunt (Anita). She would clearly allege that her uncle (appellant) used to commit forcible sexual intercourse with her by extending threat to her life. However, when she could not bear the pain on the private parts, she informed the incident to her maternal grandmother (PW-10) Chamarin Bai. Chamarin Bai thereafter informed the incident to Anita (PW-6), on which Anita confronted the appellant. However instead of admitting guilt, the appellant started beating Anita. Therefore, she convened meeting in the locality and since large number of people

gathered, the appellant ran away. Despite intense cross-examination, this witness stood firm and neither resiled nor diluted her statement in the examination-in-chief.

7. (PW-10) Chamarin Bai has supported the prosecution in examination-in-chief but thereafter the prosecution was allowed to ask leading questions. This witness has diluted her statement to a great extent and at the concluding stage she would state that Anita has falsely implicated the appellant because she has illicit relations with other boys. However, surprisingly, no such suggestion has been made to (PW-6) Anita when she was examined in the Court. No suggestion has been made to her that she has illicit relations with many other boys, therefore, to enjoy independent life, she has falsely implicated her husband to send him behind the bars.
8. When the prosecutrix was medically examined and the report (Ex.-P/7) was submitted, it was opined by the medical officer that no fresh injury was seen over the body i.e. over face, neck, chest, abdomen but hymen was found torn, old and healed. The medical officer could not give any definite opinion regarding recent sexual intercourse. However, there is no report either to the effect that no intercourse has ever taken place with the prosecutrix.

9. If the evidence of the prosecutrix, her aunt Anita and her maternal grandmother Chamarin Bai is considered along with medical evidence, it may appear that there was some dispute between the husband and wife for which they had a fight in the previous night, just before the date of lodging FIR. However, in the absence of any suggestion to witness Anita that she has lodged false report because she wants to enjoy her illicit relations with other boys, the defence taken by the appellant in his statement under Section 313 of the CrPC does not appear to be probable. Moreover, even if Anita wanted to take revenge from the appellant, she used the appellant's illegal act as weapon to teach him lesson for which Anita has planned to send the appellant behind the bars, it is the appellant's forcible sexual intercourse with the prosecutrix which provided Anita with such tools for which the appellant himself is responsible.
10. Upon reading of the entire examination of the prosecutrix, it appears, she was subjected to forcible sexual intercourse for number of times for a period of about one month just before lodging FIR. Anita may be aware of the appellant's act, therefore, she went to (PW-1) Vijay Laxmi Naidu and got prepared FIR the contents whereof are duly supported by the prosecutrix in her deposition in the Court. Anita's relations with her husband and the incident of commission of forcible sexual intercourse with the

prosecutrix are separate and distinct incident which need to be considered separately. FIR lodged by Anita with the help of (PW-1) Vijay Laxmi Naidu is not a false report in view of the support to the contents of FIR by the prosecutrix. Therefore, even if Anita has taught lesson to her husband, the incident of commission of rape is not falsified.

11. Despite giving anxious consideration to the entire evidence of (PW-1) Vijay Laxmi Naidu, the prosecutrix, Anita and Chamarin Bai, I am not convinced with the submission made by learned counsel for the appellant that the appellant has been falsely implicated. There is absolutely no reason as to why the prosecutrix would lodge false report against the appellant merely because Anita is having relations with other boys.
12. The appellant was taken into custody on 14.1.2007. He was never released on bail either by the trial Court or by this Court, therefore, the appellant has served out the entire sentence including default sentence.
13. For the foregoing, the Appeal is found to be bereft of any substance, the same deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)