

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 860 of 2011**

- Sukhlal S/o Amarsai, aged about 22 years, R/o village - Karji, Jhingadand, P.S. Rajpur, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Rajpur, District - Surguja (C.G.)

---- Respondent

For Appellant. - Shri A.N. Pandey, Advocate.
 For Respondent - Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**Per Pritinker Diwaker, J****19/07/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 29.09.2011 passed by II Additional Sessions Judge, Surguja (Ambikapur) in Sessions Trial No.47/2011 convicting the accused/appellant under Sections 376 (1) and 450 IPC & sentencing him to undergo imprisonment for life with fine of Rs.1,000/-, R.I. for seven years with fine of Rs.500/- respectively, plus default stipulations. All the sentences are directed to run concurrently.

02. As per the prosecution case, on 29.10.2010 FIR (Ex.P/3) was lodged by the prosecutrix (PW/3), aged about 11 years and 7 months, alleging in it that on 28.10.2010 at about 2.00 pm, her mother asked her to go and get basket from the house of her aunt. When she

reached there, the accused/appellant was sitting near the door. It has been further alleged that the accused/appellant caught hold her, dragged her inside the room and despite her protest and resistance, committed forcible sexual intercourse with her after removing her and his own clothes. It has been also alleged that after some time her mother reached the place of occurrence and on seeing her the accused/appellant ran away from the spot. Based on this, offence under Sections 376 and 450 IPC was registered against the accused/appellant. The prosecutrix was medically examined vide Ex.P/20 on 29.10.2010 by Dr. (Mrs.) Manju Ekka and opined that sexual intercourse was done with her. The accused/appellant was also medically examined vide Ex.P/2 and was found to be capable of performing sexual intercourse.

03. After investigation, charge sheet was filed against the accused/appellant under Sections 376 and 450 IPC, however, while framing the charge the trial Court has framed the charge under Sections 450 and 376 (1) IPC against the accused/appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- That the accused/appellant has been falsely implicated in the crime in question.
- That even if the entire prosecution case is taken as it is, it appears to be a case of consent. It has been also argued that when the mother of the prosecutrix saw her daughter in the objectionable condition, the report has been lodged.
- That from the statement of Fulaso (PW/7) - mother of the prosecutrix, it is apparent that she had sent the prosecutrix to the appellant's house for taking basket and after half an hour when prosecutrix did not return, she went there and saw the accused/appellant holding the prosecutrix on cot.
- That there is no legally admissible evidence showing the prosecutrix to be minor, thus, the sentence imposed upon the accused/appellant can be reduced.
- That the accused/appellant is in jail since 30.10.2010 and has completed 6 years and 8 months, he is young boy aged 22 years and, therefore, also his sentence may be reduced to the period already undergone by him.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under :-

- That the prosecutrix (PW/3) has duly supported the prosecution case and there is no reason for this Court to disbelieve her statement.
- That medical report Ex.P/20 of the prosecutrix also supports the fact that she was subjected to forcible sexual intercourse.
- That as per the statement of Sarita Ukey (PW/9) - Headmaster of the school, the date of birth of the prosecutrix is

15.03.1999, and that she was aged about 11 years and 7 months on the date of incident.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Prosecutrix (PW/3) has stated that on the date of incident at about 2.00 pm, her mother had asked her to go to her aunt's house to bring basket. When she reached there, the accused/appellant was standing near door, who dragged her inside his house, removed her and his own clothes and despite her protest committed forcible sexual intercourse with her. She has further stated that after some time when her mother reached there, the accused/appellant fled away from the spot and then she narrated the entire incident to her mother and report thereof was lodged in the police station. In cross-examination, this witness remained firm and has reiterated as to the manner in which she was subjected to rape by the accused/appellant.

10. Fulaso (PW/7) - mother of the prosecutrix while supporting the prosecution case has stated that on the date of incident she had asked the prosecutrix to go and get the basket from the house of appellant Sukhlal. After half an hour when prosecutrix did not return, she herself went to the house of appellant where she saw the appellant and the prosecutrix in compromising condition. The appellant, after seeing her (this witness), fled from the spot and thereafter the prosecutrix narrated the entire incident to her. In cross-examination, this witness has admitted that she did not remember the date of birth of the prosecutrix as she is not literate and on the basis of assumption her date of birth has been recorded in the school and no birth certificate was prepared. She has also stated that date of birth of the prosecutrix has not been

recorded either by the Kotwar.

11. Sarita Ukey (PW/9) is the Headmaster of the school who has proved the admission register showing the date of birth of the prosecutrix to be 15.03.1999. She states that normally a child is admitted in the school at the age of six and on this assumption she recorded the date of birth of the prosecutrix. She states that no declaration was obtained from the parents of the prosecutrix. She further admits that prior to admitting the prosecutrix in her school, she was studying in another school.

12. Raghubir (PW/4) is father of the prosecutrix and according to him, the age of the prosecutrix was about 13 years. He states that had he knew the date of birth of the prosecutrix, same would have been mentioned in the admission register. Arvind Minj (PW/8) is the Investigating Officer who has duly supported the prosecution case.

13. Dr. Manju Ekka (PW/10) is the witness who conducted medical examination of the prosecutrix and gave her report Ex.P/20 noticing vagina to be well developed, hymen absent, congestion and redness of vagina and vagina was admitting two fingers with pain. According to the doctor, the prosecutrix was subjected to sexual intercourse.

14. Close scrutiny of the evidence makes it clear that on 28.10.2010 when the prosecutrix had gone to the house of the accused/appellant to bring basket, the accused/appellant who was all alone in his house, dragged the prosecutrix inside his house, removed her and his own clothes and committed forcible sexual intercourse with her. Version of the prosecutrix, who had given a vivid account of the entire episode as to how the accused sexually assaulted her, finds corroboration from the evidence of PW/7 who reached the place of incident, saw the prosecutrix

and the accused/appellant in objectionable condition and upon seeing her the accused/appellant fled from the spot. Statement of prosecutrix further finds corroboration not only from the promptly lodged FIR but also from the medical evidence, according to which, there was congestion and redness of vagina, vagina was admitting two fingers with pain and that she was subjected to sexual intercourse. Nothing has been elicited by the defence as to why the appellant has been falsely implicated in the case and thus the stand of false implication taken by the accused/appellant is not worth acceptance.

15. The next question which arises for consideration by this Court is whether the finding recorded by the trial Court holding the prosecutrix to be minor on the date of incident is correct or not.

16. In this case, though the school register discloses the date of birth of the prosecutrix as 15.03.1999 but in the absence of any material to show as to on what basis such entry was made, it is rendered wholly meaningless. PW/9 has admitted the fact that date of birth of the prosecutrix was recorded on the basis of mere assumption and while recording the date of birth they obtain declaration of the parents but no such declaration is there with the admission register. It was the bounden duty of the prosecution to prove this fact by examining the author who has entered such date of birth but all this has not been done. Even the parents of the prosecutrix did not spell out as to what was the date of birth of the prosecutrix and no admissible evidence was given showing the date of birth of the prosecutrix as 15.03.1999. Thus, from the material collected by the prosecution, we are of the view that the prosecution has not succeeded in proving the age of the prosecutrix to be minor.

17. The findings recorded by the Court below holding the prosecutrix to be minor thus appear to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have affirmation from this Court and on this point the appellant is entitled to get benefit of doubt. However, as stated above, the prosecutrix was subjected to forcible sexual intercourse by the appellant without her consent, thus, his conviction under Section 376(1) is maintained. As regard the conviction under Section 450 IPC, the prosecution has not adduced any evidence to show that the accused/appellant had gained forceful entry in the house of the prosecutrix, rather it is the case of the prosecution that when the prosecution visited the house of her aunt to get the basket, accused was already there. In these circumstances, the appellant cannot be held guilty for committing an offence under Section 450 IPC.

18. As regards sentence under Section 376(1) IPC, the accused/appellant is in jail since 30.10.2010 and has completed 6 years and 8 months. The incident took place in the year 2010, at the time of incident he was aged about 22 year, therefore, this Court is of the opinion that ends of justice would be served if his sentence is reduced to seven years which is minimum one prescribed under the law.

19. In the result, the appeal is partly allowed. While acquitting the appellant under Section 450 IPC, his convicted under Section 376(1) IPC is maintained and he is sentenced to undergo R.I. for seven years. This apart, the appellant to pay compensation of Rs.10,000/- to the prosecutrix within six months from the date of receipt of copy of this order, failing which he shall have to undergo additional R.I. for one year.

20. The judgment impugned reveals that while writing the judgment learned Court below has put in the name of prosecutrix which is against

the legal ethics subsequently been forbidden by the Supreme Court on many occasions. Even this Court has prohibited this practice of making the identity of the prosecutrix public so that she can live an unspotted life and is not required to face any socially forbidden hurdles in the form of victimization or ostracism in public eye. The learned Court below is henceforth expected not to be indulgent in making the disclosure of identity of the rape victim so as to avoid any infamy during her lifetime.

21. Let a communication with respect to this order passed today be made to the concerned Judge so as to make him cautious of refraining from putting the name of rape victim in the judgments to be passed, as is specified in Section 228A IPC.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE