

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 225 of 2011**

- Santram S/o Jairam, Caste Halwa, aged about 30 years, R/o Kusumkasa (Guratola), P.s. - Rajhara, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through the S.H.O. Supela, District Durg (C.G.)

---- Respondent

For Appellant.	-	Shri R.N. Solapurkar, Advocate.
For Respondent	-	Shri Adhiraj Surana, Dy. Govt. Advocate.

Hon'bel Shri Justice Pritinker Diwaker**Judgment On Board****20/02/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 22.01.2011 passed by the XI Additional Sessions Judge (F.T.C.), Durg in S.T. No.192/2009 convicting the accused/appellant under Section 376 (2) (f) IPC & sentencing him to undergo R.I. for ten years and pay fine of Rs.500/-, in default of payment of fine amount to further undergo additional R.I. for two months.

02. Brief facts of the case are that on 13.09.2009 at about 5.30 pm the accused/appellant forcibly took the prosecutrix (PW/1), aged about 10 years, behind the bushes and committed forcible sexual intercourse with her. Seeing the bicycle of the prosecutrix (PW/1) lying on the road, Ravindra Kumar (PW/3) and his wife called the prosecutrix twice by her name, then wife of PW/3 heard subdued voice of prosecutrix coming

from brook, they went to the place of occurrence and found prosecutrix in naked condition. The accused/appellant was also there. The information was immediately passed on to Smt. Tai (PW/2)-mother of the prosecutrix, who after reaching the place of occurrence confirmed the incident from the prosecutrix and then F.I.R.(Ex.P/2) was lodged by her on 13.09.2009 itself. Based on this report, offence under Sections 376 and 506 IPC was registered against the accused/appellant. On 14.09.2009 the prosecutrix was medically examined by Dr. (Smt.) Ujjwala Dewangan (PW/5) vide Ex.P/7 who opined that genital injury was caused by hard and blunt object may be by sexual intercourse. Accused/appellant was also medically examined by Dr. B.P. Tiwari (PW/9) vide Ex.P/14 who opined that the accused/appellant is capable of performing sexual intercourse. After investigation, charge sheet was filed against the accused/appellant under Sections 376, 506 & 324 IPC, however, the trial Court has framed the charges under Sections 376 (2) (f) and 506 (Part-II) IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 09 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.

04. 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.

05. Learned counsel for the appellant submits as under:

- (i) that the accused/appellant has been falsely implicated in the

crime in question;

(ii) that the identification of the accused/appellant is doubtful.;

(iii) that the accused/appellant has been identified on the basis of i-card which was found lying near the place of occurrence, however, there is no conclusive piece of evidence on record showing it to be that of the accused/appellant.

(iv) that the accused/appellant had already served about 7 years jail sentence and, therefore, he may be set free after reducing his sentence.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the accused/appellant has committed rape of minor girl aged about 10 years; her medical report is positive; she has identified the accused/appellant in the identification parade (Ex.P/1); in the Court also the prosecutrix has duly identified him and thus the appeal is liable to be dismissed. He further submits that considering the fact that the accused/appellant has committed rape of minor girl aged about 10 years, appropriate sentence has already been awarded by the trial Court and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Since the prosecutrix was minor, the Court below put certain general questions to her in order to satisfy itself that she is able to understand the questions and answer the same rationally and after recording its satisfaction as to the competence of the prosecutrix to give evidence, proceeded to record her evidence. Prosecutrix (PW/1) has categorically stated that she knew the accused/appellant who is present in the Court. She has stated that on 13.09.2009 at about 5.30 pm, when

she was riding bicycle near her house, accused/appellant came there, caught hold of her hand, gagged her mouth, took her to brook near the garden and after removing his and her clothes committed forcible sexual intercourse with her. Accused/appellant inserted his penis in her private part. She has further stated that while she was being taken near the brook, her bicycle fell down and after seeing the bicycle, wife of her landlord (PW/3) reached there calling her name. At that time, the accused/appellant had gagged her mouth, however, she somehow managed to remove his hand and raised subdued voice “आ – –”, and then wife of PW/3 saw her and the accused/appellant. This witness has further stated that when her landlord PW/3 reached there, accused/appellant hidden himself behind bushes and tried to run away from the spot, PW/3 made an attempt to catch him but he somehow managed to flee from the spot leaving his shirt in his (PW/3) hand. This witness also went on to state that as a result of forcible sexual intercourse by the accused/appellant, she became unconscious and was taken by the wife of PW/3 to her house. Thereafter, information was given to her mother and report was lodged in the police station. In the cross-examination the prosecutrix stood very firm and has not deviated from her statement made in the examination-in-chief. She has also stated that she identified the accused/appellant in identification parade made under Ex.P/1.

09. Smt Tai (PW/2) - mother of prosecutrix and lodger of FIR (Ex.P/2) has also supported the prosecution case and stated that she was informed about the incident by Ravindra Kumar (PW/3) and then the report was lodged by her.

10. Ravindra Kumar (PW/3) - neighbour of the prosecutrix has stated

that after seeing the bicycle on the road, he thought as to where the prosecutrix had gone. Thereafter, he went to his house and informed his wife about the same. While his wife was calling the prosecutrix, in counter subdued voice was heard by her then she called him (this witness) who immediately reached the place of occurrence. He has further stated that as it was getting dark nothing was visible near the spot. At that time, the accused/appellant was hiding himself behind the bushes, he noticed that the trees were swaying then reached there and saw the accused/appellant in naked condition, he had worn a shirt. An attempt was made to catch the accused/appellant but he ran away from the spot leaving shirt in his (this witness) hand. This witness went on to state that he also saw the prosecutrix drenched with mud, thereafter, he and his wife took the prosecutrix, who was semi conscious, to his house and on being asked, she narrated the entire incident.

11. Sajjan Agrawal (PW/4) - witness to test identification parade (Ex.P/1) has stated that in the identification parade, the prosecutrix had identified the accused/appellant.

12. Dr. (Mrs.) Ujjwala Dewangan (PW/5) who medically examined the prosecutrix vide Ex.P/7 has found following injuries

- (i) Three abrasions of 1 cm x 0.5 cm below right eye.
- (ii) 6 to 7 linear abrasions about 1 cm to 2 cm in length over right cheek.
- (iii) Hymen ruptured, fresh bleeding from edges present. Posterior border of private part was torn about 1 cm x 0.5 cm in size, bleeds on touch, pain and tenderness present during examination.

She has stated that as per her opinion injuries 1 and 2 were caused by hard and sharp object and genital injury No.3 was caused by hard and blunt object may be due to sexual intercourse. She has

referred the case to gynecologist for further examination and expert opinion. She has further stated that the prosecutrix was subjected to rape.

13. Mahesh Verma (PW/7) has stated that when he was passing through Priyadarshani premises, he saw the crowd holding one person and then he came to know that the accused/appellant was caught hold by the persons on the allegation of rape of minor girl.

14. K.L. Tandon (PW/8) is Investigating Officer who has duly supported the prosecution case. Dr. B.P. Tiwari (PW/9) who medically examined the accused/appellant vide Ex.P/14 has stated that the secondary sexual characters were well developed, penis and scrotum well developed, no smegma present, two small scratches of 1/2 cm x 1/4 cm present below penis. He has also stated that the accused/appellant was capable of performing sexual intercourse.

15. Close scrutiny of the evidence makes it clear that on 13.09.2009 taking the advantage of helpless condition of the prosecutrix who was minor aged about 10 years, the accused/appellant committed sexual intercourse with her.

16. The prosecutrix stated that on the date of incident when she was riding bicycle the accused/appellant came to her, caught hold of her hand, gaged her mouth, took her to a brook near the garden and there committed forcible sexual intercourse with her after undressing her and himself. 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/3 who reached the place of incident, saw the prosecutrix and the accused/appellant in naked condition and when tried to catch hold of the accused/appellant, he

managed to escape. Statement of prosecutrix further finds corroboration not only from the promptly lodged FIR but also from the medical evidence, according to which, the hymen of the prosecutrix was found torn, fresh bleeding was noticed, the prosecutrix was complaining pain on touch and the injury found on the private part could come due to sexual intercourse. Moreover, 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. Defence has not been able to substantiate the plea of false implication by satisfactorily explaining as to why the accused/appellant would be falsely implicated in this case rather all the witnesses have supported the prosecution case.

17. Thus, this Court is of the considered opinion that the evidence of the prosecutrix being completely trustworthy inspire confidence. The judgment of the trial Court convicting the accused/appellant under Section 376(2) (f) of IPC is well founded and does not call for any interference in this appeal.

18. In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

19. The appellant is already in jail and, therefore, no further order is required.

Sd/-

(Pritinker Diwaker)
Ag. Chief Justice