

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 420 of 2011

- Nirmal Kumar Vaishnav @ Baba Vaishnav S/o Hanuman Das Vaishnav, R/o Village Mokhla, Near Thakurdev, P.S. Arang, Distt.-Raipur, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through P.S.Arang, District Raipur (CG)

---- Respondent

For Appellant	: Shri Shrawan Agrawal, Advocate
For Respondent /State	: Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

20/02/2017

This appeal arises out of judgment and order dated 08.03.2011 passed by the Fourteenth Additional Sessions Judge, FTC, Raipur in S.T. No. 74/2010 convicting the accused/appellant under Section 376 2(f) of IPC and sentencing him to undergo RI for ten years with fine of Rs. 2,000/- with default stipulation.

2. As per prosecution case, on 10.01.2010, at about 12.00 noon FIR Ex.P-1 was lodged by Sushila Bai @ Munni Chandrakar, alleging that at about 10.00 a.m. accused/appellant who was her neighbour forcibly took the prosecutrix (PW-12) aged 6 1/2 years, playing in the house, inside his room and forcibly committed rape on her. She was informed by daughter of one Bhola Chandraker that the prosecutrix was inside the house of accused/appellant and she was crying loudly, the door was bolted from inside. On hearing this, she came running

from the field and heard the cries of her granddaughter. At that time some of the neighbours Nandu Shatrughan and Mukesh jumped down the roof, and caught hold of the accused/appellant. Based on this FIR, offence under Section 376(2)(f) IPC was registered against the accused/appellant. Prosecutrix was medically examined vide Ex.P-12 on 10.01.2010 by Dr. Smt. A.N.Toppo (PW-7). Accused/appellant was also medically examined vide Ex.P-6 by Dr. K.K.Thawait (PW-2). After investigation, charge sheet was filed against the accused/appellant under Section 376(2)(f) IPC and accordingly charge was framed.

3. In support of its case, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits that

- i) the accused/appellant has been falsely implicated in the crime in question.
- ii) the statement of the prosecutrix is wholly unreliable and she appears to be a tutored witness.
- iii) the accused/appellant has not been given due opportunity during the trial.
- iv) the accused/appellant had already remained in jail for more than seven years and therefore his sentence be reduced to the period

already undergone by him considering his age.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material on record.

8. Prosecutrix (PW-12) is aged 07 years. Before recording her statement the trial court has recorded its satisfaction that her mental status is as such where she can answer the questions. She has stated that on the date of incident when she was playing along with other children accused/appellant came there, forcibly took her inside the room, bolted the door from inside, switched on the TV in full volume and committed bad work with her. She has stated that it was bleeding from her private part and she was crying, her grand mother came there, the police was called and they caught hold of the accused/appellant. In cross-examination she remained very firm and has reiterated as to the manner in which she was subjected to rape by the appellant. Sushila Bai @ Munni (PW-1) is the grandmother of the prosecutrix and lodger of FIR Ex.P-1. She has stated that at the time of incident she was working in the field, her daughter-in-law had gone to her parents house and the prosecutrix was playing in front of the house along with her sister. She has stated that at about 10.00 a.m. she was called by Annapurna that the prosecutrix was crying as the accused/appellant had forcibly taken her inside the room and bolted the door from inside. When she reached there she knocked the door and shouted to open but the appellant did not open the door

whereupon she called some of the neighbours namely Shatrughan, Mukesh and Nandu Chandraker who after jumping down the roof from other side went inside and pulled the door. She has stated that accused/appellant made an attempt to run away from the spot but was caught hold by the neighbours and information was given to the police. She has stated that when she went inside, she saw the prosecutrix sustained injuries in her private part and was bleeding, the mattress was also drenched in blood. In cross-examination she remained very firm. Dr. K.K.Thawait (PW-2) had medically examined the accused/appellant vide Ex.P-6 and has noticed number of injuries on his shoulder, right and left elbow and on the back. According to him, the accused/appellant was capable of performing sexual intercourse. Shankar Lal (PW-3) grand father of the prosecutrix has stated that he was working as watchman and on the date of incident he was informed by one Bhola on telephone that his wife Sushila Bai and the Prosecutrix were going to police station for lodging the FIR. He has stated that when he reached there he saw the clothes of the prosecutrix and the accused/appellant were stained with blood. Bisahu Ram (PW- 4) is a villager who was telephonically informed by Bhola Ram that some incident had taken place near his house and when he came there he saw his neighbours standing near his house and came to know that the appellant forcibly took the prosecutrix inside the room, bolted it from inside. He has stated that when the accused/appellant did not open the door, they jumped down the roof, went inside and saw the prosecutrix drenched in blood. Ku. Poonam Chandrakar (PW-5) friend of the prosecutrix has stated that on the date of incident, she along with one Dikeshwari Chandrakar and prosecutrix were playing in front of their house and at that time, accused/appellant came there and

forcibly took the prosecutrix inside his house and locked the door from inside. She has stated that when she heard the cries of the prosecutrix coming from the room, she called her grandmother who was working in the field. Ashwani Kumar (PW-6) has stated that he was informed by Bholaram (Panch) about the incident and that the accused/appellant was caught by the villagers and was arrested by the police. Dr. Smt. A.M.Toppo (PW-7) had medically examined the prosecutrix vide Ex.P-12 and on external examination of genital organ has found redness, swelling and tenderness present on in both valva, dry, dark red coloured blood present on both thigh. On physical examination she found hymen ruptured and fresh blood coming from wound. According to her, prosecutrix was victim of rape. Suresh Chandra Patkar (PW-8) is the patwari who prepared spot map. Bhola Ram Chandrakar (PW-09) also reached the place of occurrence and came to know that it is the accused/appellant who committed rape on the prosecutrix. Shatrughan Chandrakar (PW-10) is a person who along with other villagers have entered the house of accused/appellant by jumping down the roof and saw the prosecutrix crying. Kumari Chandrakar (PW-11) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that on the date of incident, prosecutrix who was a minor, aged about 6 years was forcibly taken by the accused/appellant inside his house, bolted the door from inside and then committed rape on her. Statement of the prosecutrix has also been duly supported by her grandmother (P.W.-1), villagers Nandu Shatrughan, Mukesh an Nirmal Kumar @ Baba Vaishnav and her friend Poonam Chandrakar. The statement of the prosecutrix has been duly supported by her medical evidence. The crime here is a rape

of minor. It is particularly a heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The age of the child and the physical damage inflicted on her, the psychological damage caused to her, require the maximum sentence imposed on the appellant.

10. Further the defence taken by the accused/appellant is not substantiated by any legally admissible evidence and being so, the only conclusion which can be drawn by this Court is that the prosecutrix was subjected to rape by the accused/appellant. Thus it can be held that the statement of the prosecutrix inspires full confidence of this Court and there is no reason to discard the same.

9. Accordingly, the findings recorded by the Court below convicting the accused/appellant under Section 376 (2)(f) IPC is just and proper and no interference with the same is called for. Judgment impugned is left undisturbed. The appeal being without substance is hereby dismissed.

Sd/-

Pritinker Diwaker
Judge

