

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 866 of 2011

Shesh Narayan Sahu, S/o. Ishwarilal Sahu @ Dhanushlal, aged about 36 years, Occupation – Property Dealer, Presently R/o. Village Karga, P.S.- Kurud, Permanent R/o. Village Ghanora, P.S. Utai, Distt.-Durg, C.G.

---- Appellant

Versus

State of Chhattisgarh, Through : Police Station – Rajim, District – Raipur (C.G.)

-----Respondent

For Appellant	: Mr. H.P. Agrawal, Advocate
For Respondent/State	: Mr. Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/09/2017

Heard.

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30.08.2010, passed in S.T. No.40/2009, by the Additional Sessions Judge, Gariyaband, District – Raipur, , whereby the learned Additional Sessions Judge has convicted the appellant for the offence under Section 376 (1) of Indian Penal Code and sentenced to under go rigorous imprisonment of 10 years and fine of Rs.100/- and for offence Section 506(2) of Indian Penal Code and sentenced to under to rigorous imprisonment of 1 year and fine of Rs.100/- with default stipulations.

2. Facts of the case in brief are that on 06.02.2009 at about 8 PM, appellant on the pretext of performing witchcraft, asked the prosecutrix (P.W.-4) to take of her cloths and thereafter committed forceful intercourse with her. Unnumbered FIR Ex.P/4 was lodged on 07.02.2009 at Police Station – Gobara Nayapara, on the basis of which, numbered FIR was separately recorded. Prosecutrix was medically examined. After completion of investigation, appellant was charge-sheeted.
3. Appellant was charged for offence under Section 376 (1) and 506 Part-II of Indian Penal Code. On his denial of charges, he was tried and the trial Court after affording opportunity of leading evidence to the prosecution and the defence has passed judgment by which, the appellant stands convicted and sentenced as aforementioned.
4. Grounds in this appeal are these that the trial Court has erroneously appreciated the evidence of the prosecutrix and other witnesses and come to the conclusion. The evidence of prosecution witnesses was not believable, hence appellant was entitled for benefit of doubt. In the alternative it is pleaded at the most the case under Section 354 of I.P.C. is made out, hence the appellant be acquitted of all the charges.
5. On the other hand, learned State counsel has opposed the grounds raised in these appeal and the arguments submitted on behalf of the appellant.
6. I have heard the learned counsel for the parties at length and perused all the documents and material on record of the trial Court.

7. Considering the material on record and the arguments submitted on behalf of both the sides, the question arises in this appeal is, whether the conclusion arrived at by the trial Court is beyond reasonable doubt to support the conviction of the appellant under the aforementioned sections?
8. Prosecutrix (P.W.-4) was aged about 14 years on the date of incident. No question was put to her in her cross-examination about her age. Similarly no question was put in defence to Shiv Kumari Sahu (P.W.-6), the mother and Rambharosa Sahu (P.W.-7), the father of the prosecutrix. Rambharosa Sahu (P.W.-7) has stated that the age of the prosecutrix was 14 years. Dhaniram Sahu, Head Master (P.W.-13) has proved the age of the prosecutrix on the basis of school record, according to which, her date of birth was 07.01.1995, according to which, the age of the prosecutrix was below 16 years on the date of incident. Dr. Pushpa Guru (P.W.-23) while examining the prosecutrix has assessed her age to be 14 years. Hence, the finding of the trial Court regarding age of the prosecutrix is a correct finding, which needs no interference.
9. Prosecutrix (P.W.-4) has categorically stated that at the time of incident, appellant forced her to take of her clothes and thereafter by using force on her, he raped her. Her statement has remained unrebutted in the cross-examination. Smt. Shiv Kumari Sahu (P.W.-6), the mother of the prosecutrix, Rambharosa Sahu (P.W.-7), father of the prosecutrix and Netra Bai (P.W.15) have stated, that they were immediately informed by the prosecutrix, when she was raped by the appellant. There is no other direct evidence to the incident.

The evidence of the prosecutrix is supported by the witnesses, who were informed soon after the incident and there is no reason to disbelieve her statement.

10. Dr. Pushpa Guru (P.W.-23) while examining the prosecutrix vide her report Ex.P/8 has reported that she found the hymen of the prosecutrix in torn condition with bleeding and she also found that secondary sexual character were not developed on the body of the prosecutrix. She has given positive opinion that hymen of the prosecutrix was damaged from recent injury this statement is unrebutted in cross-examination and this evidence directly corroborates the statement made by the prosecutrix (P.W.-4).
11. After due consideration and the scrutiny of all the evidence on record, it is found that the finding of conviction recorded by the trial Court does not suffer from any infirmity. Hence this appeal is without any merits and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge