

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 97 of 2012**

(Arising out of judgment/order dated 30.11.2011 in Sessions Trial No. 50 of 2011 passed by the Learned First Additional Sessions Judge, Rajnandgaon, Chhattisgarh)

Banshi Shikari S/o Pardeshi Shikari, aged about 57 years, R/o Shikaripara, Basantpur, District- Rajnandgaon (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through – Police Station – Lalbagh, District- Rajnandgaon (C.G.)

---- Respondent

For Appellant	:	Shri Parag Kotecha, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Thottathil B. Radhakrishnan, CJ
Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board By Justice Pritinker Diwaker**09/09/2017**

1. This appeal arises out of impugned judgment and order dated 30.11.2011 passed by the First Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 50/2011 convicting the appellant under Section 376 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs. 1,000/- with default stipulation.
2. Brief facts of the case are that on 25.4.2011, a written report (Ex.-P/2) was lodged by the father of the prosecutrix namely Bisram Sahu (PW-4) alleging in it that the accused/appellant was residing in his house as a village doctor to treat his mother and during that period, he committed rape upon his minor daughter (PW-3). Based on this written report, First Information Report (Ex-P/3) was registered

against the accused/appellant on 25.4.2011 under Section 376 IPC. As per written report, the prosecutrix was not having her menses and that PW-4 knew that she was pregnant. M.L.C. (Ex.P/10) was conducted by Dr.(Smt.) Sajida Alam (PW-7), she opined that no signs of forceful sexual intercourse were found and the prosecutrix is sexually habitual. After investigation, the charge-sheet was filed against the accused/appellant under Section 376 of IPC and while framing the charges, the trial Judge framed the charge against the accused/appellant under Section 376 of IPC.

3. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. Statements of the accused 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.

4. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above, hence this appeal.

5. Counsel for the appellants submits as under:-

- (i) that the prosecutrix was a consenting party and the report has been lodged after an inordinate delay of about 4 months.
- (ii) that there is no legally admissible evidence showing the prosecutrix to be minor.
- (iii) that the appellant is in jail since 26.4.2011 and therefore he may be set free forthwith.

6. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. We have heard the counsel for the respective parties and perused the evidence on record.

8. PW-1, Smt. Ramla Bai, is the mother of the prosecutrix. She has stated that the accused/appellant was living in her house to treat her mother-in-law. She has also stated that the prosecutrix informed her that she was not having her menses and then she disclosed that the accused had physical relations with her (prosecutrix). She has further stated that the prosecutrix is aged about 13 years.

9. PW-2, Dr. D.R. Dhurve, did the medical examination of the prosecutrix and has stated that she was not carrying pregnancy.

10. PW-3, prosecutrix, has stated that she was subjected to physical relations by the accused/appellant and that she was taken by her mother to the Doctor. She has further stated that on number of occasions, the appellant had physical relations with her.

11. PW-4, Bisram, father of the prosecutrix, lodged the written report, based on which the F.I.R. was registered against the accused/appellant. He has stated that the prosecutrix was about 12 years of age and even he has not disclosed her date of birth.

12. PW-5, Dr. Anil Mahakalkar, who medically examined the accused/appellant vide Ex.P/9 has stated that the accused was capable of performing sexual intercourse.

13. PW-6, Rajeev Shrivastava, is the Patwari who prepared the spot map.

14. PW-7, Dr.(Smt.) Sajida Alam, conducted the M.L.C. of the prosecutrix and she opined that no signs of forcible sexual intercourse were found and the prosecutrix is habitual to sexual intercourse vide Ex.-P/10.

15. PW-8, Ku. Yogita Khopde, is the Investigating Officer who has supported the prosecution case.

16. Close scrutiny of the evidence makes it clear that there is an inordinate delay of about 4 months in lodging the F.I.R. and the said delay has not been explained by the prosecution as required under the law. Further there is no legally admissible evidence showing the prosecutrix to be minor. No documentary evidence has been proved by the prosecution in this respect and even the oral evidence in this respect is not conclusive and reliable. The father and mother of the prosecutrix have just given the approximate age of the prosecutrix and they have not disclosed as to on what basis they are deposing the age of the prosecutrix. The author of the document (Ex.-P/7) has also not been examined by the prosecution.

17. Taking cumulative effect of the evidence collected by the prosecution, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and it is the accused/appellant who is entitled to get benefit of doubt.

18. Consequently, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. He is in jail. He be set free forthwith, if not required in any other case.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge