

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 75 of 2014

- Jagat Sahu S/o Shri Baliram Sahu @ Baiha Aged About 32 Years R/o Vill. Raikona, Ps Sarsiva, Civil/rev. Distt. Baloda Bazar - Bhatapara C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through Ps Sarsiva, Distt. Baloda Bazar, Bhatapara C.G.

---- Respondent

For Appellant	: Shri Anuvad Shrivastava & Shri Alok Nigam, Advocates.
For Respondent/State	: Shri Rahul Tamaskar, P.L.

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

Judgement on Board

Per Pritinker Diwaker, J.

27/07/2017

This appeal has been preferred against the judgment and order dated 29.11.2013 passed by the Second Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 66/2013 convicting the accused/appellant under Section 376 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000 plus default stipulation.

2. Brief facts of the case are that on 24.12.2012, written complaint was lodged by the prosecutrix (PW-2) aged 19 years alleging that on 23.12.2012, when she was all alone in her house, accused/appellant

came to her and asked to meet him in her house at Bilaspur. She has stated that at about 11.00 a.m. she reached her house at Bilaspur and at about 12.00 noon accused/appellant reached there, had promised her for marriage and took her on his motor cycle to Sarangarh from where both of them went to various places and then came to her house at Bilaspur where after promising her for marriage developed physical relation without her consent. She has further stated thereafter he refused to marry her stating that as he is already married and have two children, he could not marry her and if she is willing to maintain the relation with him she can continue. FIR was registered against the accused/appellant on 24.12.2012 under Section 376 IPC. Prosecutrix was medically examined vide Ex.P-12 by Dr. Anita Verma (PW-5) on 26.12.2012 and according to her there were abrasions on left breast, left elbow, left knee, right knee, left leg and in her opinion the prosecutrix had undergone intercourse 3-4 days back. Accused/.appellant was also medically examined on 26.12.2012 by Dr. Deendayal Sahu (PW-7) and according to him, the appellant was capable of performing sexual intercourse. After filing of the charge sheet, trial Judge has framed charge against the appellant under Section 376 IPC.

3. So as to hold the accused/appellant guilty, the prosecution has examined 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case. This apart five defence witnesses have also been examined by him in support of his case.

4. By the judgment impugned the Court below has convicted and

sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence this appeal.

5. Contention of the counsel for the appellant is that :

i) the accused/appellant has been falsely implicated at the behest of Ram Kishan (PW-10) with whom he was having inimical relation.

ii) the written report has been drafted and prepared by Ram Kishan (PW-10) and this shows the false implication of the accused/appellant.

iii) the defence witnesses have proved the animosity between the appellant and Ramkishan (PW-10).

iv) from the conduct and the statement of the prosecutrix it is apparent that she was a consenting party but unfortunately while she was roaming around along with the appellant she was seen by Bhagirathi (PW-8) local villager and that is why a false complaint has been lodged.

v) the appellant is a married man and therefore question of making any promise for marriage to the prosecutrix does not arise.

vi) if the conviction of the appellant is maintained by this Court at least the sentence imposed on him may be reduced and considering the conduct of the prosecutrix it can be less than seven years.

vii) the appellant is in jail for the last more than 4 1/2 years and therefore his sentence may be reduced to the period already undergone by him.

6. On the other hand supporting the impugned judgment 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. He submits

that the prosecutrix may be a consenting party who roamed around with the appellant but she had never given her consent to the appellant to have physical relation with her. He submits that the medical report (Ex.P-15) of the prosecutrix has been found positive. Further it has been argued that the sentence imposed by the trial court is appropriate and under no circumstances it can be reduced to less than seven years.

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

8. Prosecutrix (PW-2) has stated that on the date of incident i.e. 23.12.2012, when she was all alone in the house, accused/appellant came to her and asked to meet him in her house at Bilaspur. She has stated that at about 11.00 a.m. she reached her house at Bilaspur and there at about 12.00 noon accused/appellant reached there, had promised her for marriage and took her on his motor cycle to Sarangarh from where both of them went to various places and then came to her house at Bilaspur where after promising her for marriage developed physical relation without her consent. She has further stated that thereafter he refused to marry her stating that as he is already married and have two children, he could not marry her and if she is willing to maintain the relation with him she can continue. In cross-examination, she remained firm and nothing could be elicited from her. Dr. Anita Verma (PW-5) had medically examined the prosecutrix vide Ex.P- 2 and has stated that she was subjected to sexual intercourse within 3-4 days from the date of her examination. Dr. Deendayal Sahu (PW-7) has stated that he had medically examined the accused/appellant vide Ex.P-9/A and according to him, the accused/appellant was capable of performing sexual intercourse. M.L.Tiwari (PW-11) is the Investigating

Officer who has duly supported the prosecution case. Poornima (PW-3) and Radhelal (PW-4) mother and father of the prosecutrix while supporting the prosecution case has stated that they were informed by their daughter about the act of the appellant. The defence witnesses have stated that as there was enmity between the accused/appellant and Ramkishan (PW-10) therefore a false case has been lodged against the accused/appellant at the instance of PW-10.

9. Close scrutiny of the evidence makes it clear that on 23.12.12 accused/appellant had developed physical relation with the prosecutrix against her wishes and that too after promising her for marriage. Prosecutrix has duly supported the prosecution case. Her evidence stands further corroborated from the statements of her father and mother (PW-3 and PW-4) as also her medical report. The defence has utterly failed to elicit anything from the prosecutrix in her lengthy cross-examination which could suggest that she was a consenting party to the act of the accused/appellant. Thus considering the overall and circumstances of the case, in particular the statement of the prosecutrix, we are of the view that the trial court was justified in convicting the appellant under Section 376 IPC and therefore we maintain the same.

10. Next question that arises for consideration before this Court is as to what would be the appropriate sentence to be awarded to the appellant. Considering all the facts and circumstances of the case, the conduct and the statement of the prosecutrix, her age and that the age of the appellant and further considering the fact that the appellant is a married man, having two children, we are of the view that ends of justice would be served if the sentence of life imposed on him is

reduced to that of seven years. In the result the appeal is partly allowed. While maintaining conviction of the appellant under Section 376 IPC, his sentence of life imprisonment is hereby reduced to the period of seven years. As the appellant is reported to be in jail, therefore no further order is required to be passed in respect of his arrest etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge