

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1110 of 2012

- Mohd. Mujib S/o Budhan Ansari Aged About 30 Years R/o Ibrahimpur, PS Finjar, Distt. Arbal (Bihar)

---- Appellant

Versus

- State Of Chhattisgarh Through : SHO, PS : Pathalgaon, Distt. : Jashpur C.G.

---- Respondent

For Appellant	:	Shri J.K.Saxena, Advocate
For Respondent /State	:	Smt. Smita Ghai, P.L.

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

Judgement on Board by Pritinker Diwaker, J.

25/09/2017

This appeal arises out of judgment and order dated 27.11.2012 passed by the Additional Sessions Judge, Kunkuri district Jashpur in Sessions Trial No. 52/2009 convicting the accused/appellant under Sections 376(1), 366 and 363 of IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 3,000/- u/s. 376(1), RI for 5 years and to pay fine of Rs. 2,000/- u/s. 366 and RI for 2 years and pay fine of Rs. 1,000 u/s. 363 with default stipulations.

2. Brief facts of the case are that on 05.05.09 at about 11.00 a.m. accused/appellant took the prosecutrix (PW-7) a minor girl aged about 8 years along with him and committed rape on her. Immediately after the incident the prosecutrix narrated the entire incident to her father Shani Ram (PW-4) who lodged FIR Ex.P-2 on the same day at 3.30

p.m. Based on this FIR offence under Section 376 IPC was registered against unknown person. Prosecutrix was medically examined on 05.05.09 at 6.00 p.m. vide Ex.P-10 by Dr. Anita Minj (PW-17) who opined that there was recent sign of sexual intercourse seen and she referred the prosecutrix to Radiologist for age determination. On 16.08.09 identification parade of the accused/appellant was conducted vide R. K. Kripal (PW-19) Tahsildar and in the said identification parade the prosecutrix had duly identified the appellant. While framing the charge, trial judge has framed charge against the appellant under Sections 363,366 and 376 IPC.

3. The prosecution has examined 20 witnesses to prove its case. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After conclusion of the trial, the trial Court vide its judgment impugned, found the accused/appellant guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

i) that the appellant has been falsely implicated in the crime in question.

ii) that the identification parade of the appellant was conducted after an inordinate delay and therefore the appellant is entitled for benefit of doubt.

iii) that the prosecutrix appears to be a tutored witness.

5. 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. She submits that the prosecutrix has not only identified the appellant in the Test Identification Parade Ex.P-12 but she has also identified him in the court and the Dock. identification of the appellant is good enough to uphold his conviction. She further submits that the medical report of the prosecutrix defines the brutality with which the offence has been committed and the appellant is not entitled for any leniency.

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

8. Prosecutrix (PW-7) has stated that she knew the appellant. On the date of incident when she was returning from the market, she met the accused/appellant who caught hold of her hand and dragged her to some distance and committed rape on her. She has stated that thereafter she narrated the entire incident to her father and she was medically examined. In cross-examination she remained firm and nothing could be elicited from her. Dr. Anita Minj (PW-17) conducted medical examination of the prosecutrix vide Ex.P-10 and noticed following injuries:

i) external injury was seen over the body of the prosecutrix.

ii) there was abrasion seen over left shoulder size 2 cm.x 2 cm., redness, swelling and tenderness present

iii) abrasion on abdomen size 4 cm. x 1/2 cm., redness in colour

iv) multiple abrasion present in back side in the size of 4 cm. x 1/2 cm. red in colour 3 cm. x 1/2 cm.

hymen ruptured red congested inflamed bleeding from the vagina present, lacerated wound of the external genitals present in the size 5-6 cm. x 2 cm. x 1 cm.

She has opined that there was recent sign of sexual intercourse seen and she referred the prosecutrix to Radiologist for age determination. Dr. Basant Singh (PW-1) medically examined the appellant vide Ex.P-1 and has stated that he was capable of performing sexual intercourse. Mohan Gupta (PW-2) a villager has stated that on the date of incident he saw the accused/appellant taking the prosecutrix along with him. Almost similar statement has been made by Ramesh Rai (PW-6), Gouri Bai (PW-9), Tula Ram (PW-10) and Shyam Bahadur Soni (PW-11). Shaniram (PW-4) is the father of the prosecutrix who had lodged the FIR has duly supported the prosecution case. He has stated that appellant was the driver of the truck who after committing the offence tried to run away and when he asked the appellant to stop the vehicle, he drove fastly. Tula Ram (PW-10) is the investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on 05.05.09 taking the advantage of the young age of the prosecutrix, accused/appellant took her along with him and committed rape on her in a very brutal manner. After the incident the prosecutrix immediately narrated the incident to her father who lodged the prompt FIR Ex.P-2. Prosecutrix was medically examined vide Ex.P-10 by the Doctor who opined that there was recent sign of sexual intercourse seen. Apart from this, the identification parade conducted by Tahsildar (PW-19) where the prosecutrix has duly identified the appellant. In the Court also she had identified the appellant and there is no serious challenge to the Dock identification. Mohan Gupta (PW-2), Ramesh Rai (PW-6), Gouri Bai (PW-9), Tula Ram (PW-10) and Shyam Bahadur Soni

(PW-11), had seen the accused/appellant taking the prosecutrix along with him and this is yet another strong piece of evidence against the appellant. After scrutinizing the evidence as put forth by the prosecution, we are of the view that the trial court was justified in convicting the appellant. Appeal has no substance, the same is accordingly dismissed. Appellant is already in jail and therefore no further order in respect of arrest etc. of the accused is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge