

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 107 of 2016

- Satish Meshram S/o Chherka Meshram Aged About 29 Years R/o Village Lanjoda Platpara, Police Station And Civil & Rev. District Kondagaon, District Kondagaon Chhattisgarh.

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Kondagaon, District Kondagaon Chhattisgarh.

---- Respondent

For Appellant	:	Shri A.K. Shukla, Advocate
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

Per P. Diwaker, J

30/11/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 24.11.2015 passed by the Additional Sessions Judge, Kondagaon in S.T. No.289/2012 whereby the accused/appellant has been convicted under Section 376 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for life and fine of Rs.10,000/-, in default to undergo additional R.I. for 02 years.
2. As per case of the prosecution, on 16.8.2009 at about 4 p.m. the prosecutrix (PW-1), a minor girl aged about 8 years, was returning home after answering the call of nature from the village pond. Suddenly, the accused/appellant caught hold of hands of the prosecutrix, took her towards the bushes, removed her clothes, made her to lie down and

thereafter put his male organ into her female organ as a result she raised cries due to pain. It is further case of the prosecution that while the prosecutrix was being subjected to forcible sexual intercourse by the accused, Smt. Kamlabai (PW-2) reached there and seeing the accused mounted on her, asked him as to why he had done so. This witness had also narrated the entire incident to the mother of the prosecutrix. FIR (Ex.P-2) was lodged on 17.8.2009 at the instance of PW-3, mother of prosecutrix, based on which offence under Section 376 of IPC was registered against the accused/appellant. The prosecutrix was medically examined by Dr. Rajni Thakur (PW-7) on 17.8.2009 vide Ex.P-6. According to the opinion of the doctor, the secondary sexual character of the prosecutrix was not well developed, she had been subjected to sexual intercourse, her hymen was ruptured and her vagina was admitting one finger with pain. She further opined that there were signs of recent sexual intercourse on the private part of the prosecutrix. She also advised radiological examination for ascertaining the age of the prosecutrix. On the basis of ossification test, Dr. Jagat Thakur (PW-6) determined the age of the prosecutrix between 13 & 14 years.

3. After completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Section 376 of the IPC and accordingly the charge was framed by the trial Court against him. In order to convict accused/appellant, the prosecution examined 07 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment

convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

5. Learned counsel for the accused/appellant submits that:

- the appellant is innocent and has been falsely implicated in the crime in question.
- there are lot of contradictions in the statement of the prosecutrix (PW-1) and Kamlabai (PW-2), who is the alleged eyewitness of the incident.
- According to the prosecutrix, the appellant had committed sexual intercourse with her against her wishes on earth, but as per medical evidence, no injury was noticed on the private parts or back of the prosecutrix. If the appellant had raped the prosecutrix against her wishes on the earth, then injuries on her private parts or back were expected. Absence of any internal or external injury is indicative of the fact that no offence has been committed with the prosecutrix and she had falsely implicated the appellant.
- Finally, it is submitted that in any case the sentence awarded is too excessive and leniency is to be shown.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that the prosecution has discharged its onus in establishing beyond reasonable doubt that the accused/appellant has committed rape on the prosecutrix and therefore the trial Court right in coming to the conclusion that the appellant had committed rape on the prosecutrix. He further submits that the sentence awarded by the trial Court is proper and adequate in the given facts and circumstances of the case and there is no reason to interfere with the same.

7. The prosecutrix appears as PW-1 who at the time of incident was aged about 8 years. She being a minor was put certain questions by the Court

and only after coming to the opinion that she can give rational answers to the questions put to her, her statement was recorded on oath by the trial Court. She has stated that on the date of incident when she was returning home after answering the call of nature, on the way, the accused took her towards shrubs and there committed rape with her. While she was being subjected to sexual intercourse, Kamla (PW-2) reached there and on seeing her, the accused fled from there. She was brought home by Kamla and she narrated the entire incident to her parents. Thereafter, they had gone to the police station in the night where her mother had lodged the report. On being asked, she disclosed the entire incident to the police also. She has further stated that she was medically examined by a lady doctor. The prosecutrix was cross-examined at length by the defence but nothing significant could be elicited so as to render her evidence doubtful or untrustworthy.

8. Smt. Kamla (PW-2) is the lady who reached on the spot when the accused/appellant was committing rape with the prosecutrix. According to this witness, she saw the accused/appellant lying over the prosecutrix and seeing so, she had asked from the accused as to why he did so. On being asked, the prosecutrix told her that the accused had committed bad work with her.
9. Smt. Dayamati (PW-3), mother of the prosecutrix and lodger of FIR. Dhanlaxmi (PW-4) is the elder sister of the prosecutrix. Both these witnesses have stated that the prosecutrix disclosed about the incident to them.
10. Rajendra Prasad Mishra (PW-5) is the investigating officer who has duly supported the prosecution case.
11. Dr. Jagat Thakur (PW-6) is the Radiologist who took x-ray of the prosecutrix for confirmation of her age and as per x-ray report (Ex.P-14),

the prosecutrix was found about 13 years and below 14 years.

12. Dr. Rajni Thakur (PW-7) is the doctor who medically examined the prosecutrix and noticed that hymen of the prosecutrix was ruptured. Her vagina was admitting one finger with pain. She has further stated that there were signs of recent sexual intercourse on the private part of the prosecutrix and that she had been subjected to sexual intercourse
13. Close scrutiny of the evidence on record makes it clear that on the fateful day when the prosecutrix was returning home after answering the call of nature, the accused/appellant caught hold of her, took her towards the shrubs and there committed forcible sexual intercourse with her. Statement of the prosecutrix is clear, categorical and cogent and also finds support from the evidence of Smt. Kamla (PW-2) who stated to have witnessed the accused/appellant to be engaged in the act of forcible sexual intercourse with the prosecutrix, when she reached the spot. According to this witness, she saw the accused/appellant lying over the prosecutrix and that the prosecutrix disclosed to her that the accused had done "galat kaam" (rape) with her. Medical evidence also supports the version of the prosecutrix in which not only her hymen was found torn but signs of recent intercourse were also noticed. There is absolutely no evidence on record suggesting that there is any enmity between the prosecutrix or the members of her family at one side and the accused/appellant or the members of his family on the other. No doubt, a suggestion was put to the prosecutrix that her relatives were on inimical terms with the relatives of the appellant, but she had denied such suggestion. Thus, we find no ground to interfere with the judgment of conviction as passed and uphold the same.
14. As regards the submission regarding reduction of sentence, sexual offences constitute an altogether different kind of crime which is the result

of a perverse mind. When rape is committed on a tender aged girl, it creates a permanent impact and impression on the mind of such a girl which may permanently affect her adversely. In the present case also, the accused/appellant had ravished an innocent girl aged about 13 years to satisfy his lust leaving an indelible scar in her mindset till her survival. Act of the accused/appellant was both despicable and reprehensible reflecting a perverted mind. He deserves no leniency. Thus, the sentence of life imprisonment as awarded by the trial Court, is commensurate with the gravity of the offence.

15. For the reasons discussed above, we do not find any merit in this appeal.

The appeal, in other words, fails and it is dismissed as such. The judgment of conviction and order of sentence passed by the trial Court against the accused/appellant is hereby confirmed.

16. Since the accused/appellant is already in custody, no direction regarding his surrender etc. is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-