

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2009 of 1998

Shivnarayan alias Shiva Gupta, son of Bhodan Sav, aged about 38 years, resident of Village Bhedani, P.S. Balrampur, District Surguja, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through Police Station Balrampur, District Surguja (Ambikapur), M.P. (now Chhattisgarh)

--- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

2.7.2018

1. This appeal is directed against the judgment dated 1.8.1998 passed by the 2nd Additional Sessions Judge, Ambikapur in Sessions Trial No.193 of 1996 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that on 16.2.1996 at about 8:00 p.m., when the prosecutrix (PW1), aged about 13 years, came out of her house to discharge urine, the Appellant reached there and took her forcibly to a field and committed rape with her there. First Information Report (Ex.P1) was lodged by her on 17.2.1996 at

10:20 a.m. She was medically examined by Dr. Sunita Sharma (PW5). Her report is Ex.P6 in which she found that two fingers were easily being inserted in the vagina of the prosecutrix and no injury was present on any part of her body. The prosecutrix was found habitual to sexual intercourse and no sign of recent sexual intercourse with her was found. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376 and 506 of the Indian Penal Code followed by framing of charges against him under Sections 376 and 506 Part II of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 6 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. 1 witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been falsely implicated in the case. At the time of alleged incident, the prosecutrix was above 16 years of age and she was a consenting party. Regarding age of the prosecutrix, no document has been produced by the prosecution nor an

ossification test of the prosecutrix was conducted. Though the prosecutrix has stated her age to be 13 years, she has admitted that she has stated her age on surmises. Since she was a consenting party and was above 18 years of age, no offence is made out against the Appellant and he deserves acquittal.

6. Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1) has stated that on the date of incident at about 8:00 p.m., when she had gone out of her house to discharge urine, at that time the Appellant lifted her up and took her to *badi* (fence) and there he removed her underwear and clothes and committed forcible sexual intercourse with her. She has further stated that thereafter she lodged the FIR (Ex.P1). In her cross-examination, she has admitted that she was already acquainted with the Appellant. She has further admitted that the Appellant first removed her underwear and thereafter removed his pant and spread his pant on the earth and made her lie down on the pant. Thereafter, he removed his underwear and committed sexual intercourse with her. She has further stated that at that time, her father shouting came there then the Appellant asked her not to shout otherwise her father will come to know that they were present there. She has further stated that she had asked the

Appellant to leave her otherwise her father will reach there. She has further stated that her father had scolded her, therefore, under compulsion, she told the name of the Appellant. If she had not been scolded, she would not have told anything. In paragraphs 16, 17 and 18 of her cross-examination, she has further stated that a panchayat meeting had taken place and in the said panchayat meeting, the Appellant was asked to pay Rs.10,000/- with a warning that if he does not pay the said amount, a report will be lodged against him. The Appellant did not pay the amount. Had he paid the said amount, no report would have been lodged against him. She has further admitted that her father had asked her to say that she had been raped, therefore, in the report, she had told about rape with her. She has admitted that she could not be able to depose about the date or year of her birth and she has stated her age to be 13 years on surmises. Her father had got her name and age recorded in the school record.

9. Balbhadra Singh (PW2) is the witness of seizure memo (Ex.P4) and Rampyare (PW4) is the witness of seizure memo (Ex.P3). Shankar Prasad (PW3) has not supported the case of the prosecution and has been declared hostile. Dr. Sunita Sharma (PW5) is the witness who medically examined the prosecutrix. She has stated that her report is Ex.P6 in which she found that two fingers were easily being inserted in the vagina of the prosecutrix and no injury was present on any part of her body. The prosecutrix was found habitual to sexual intercourse and no sign of recent sexual intercourse with her was found. She has stated that no ossification test was conducted regarding age of the prosecutrix and she herself had not given any definite opinion regarding age of

the prosecutrix. Investigating Officer R.K. Mishra (PW6) has stated that he investigated the offence in question.

10. A minute examination of the above evidence makes it clear that though the prosecutrix has stated that the Appellant had committed sexual intercourse with her, from her admission itself it is clear that she was a consenting party to the act done with her and she lodged the FIR (Ex.P1) on being pressurised by her father. As per the prosecution story, at the time of incident, age of the prosecutrix was 13 years, but there is no documentary evidence available regarding her date of birth. Though she has stated that she was admitted in the school, but no school register or Kotwari register or any other document relating to her date of birth or age has been seized by the prosecution. Her father has also not been examined. Dr. Sunita Sharma (PW5), in her report (Ex.P6), has also not given any definite opinion regarding age of the prosecutrix. No ossification test of the prosecutrix was conducted by the prosecution. Therefore, there is nothing on record to show that the prosecutrix was below 16 years of age. Since the prosecutrix was a consenting party and there is nothing on record to show that on the date of incident she was below 16 years of age, the Appellant is entitled to get benefit of doubt.
11. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
12. It is reported that the Appellant is on bail. His bail bonds shall

continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.

- 13.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge