

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 09.07.2018

Judgement Delivered on 17.07.2018

CRA No. 672 of 2002

- Manoj Kumar Singh S/o Shri Krit Narayan Singh, aged about 20 years Rajput, Resident of Village Taparkela P.S. Darima, District- Sarguja (C.G.).

---- Appellant

Versus

- State of Chhattisgarh Through- P.S. Darima, District- Sarguja (Chhattisgarh).

---- Respondent

For Appellant	: Mr. Arun Kochar, Advocate.
For Respondent/State	: Mr.Adhiraj Surana, Dy. G. A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment (C.A.V.)

1. This appeal arises out of the judgment of conviction and order of sentence dated 05.06.2002 passed by the learned 3rd Additional Sessions Judge, Ambikapur, Sarguja in S.T. No. 138/2000 convicting the accused/appellant under Section 376(1) of IPC and sentencing him to undergo RI for seven years.
2. Brief facts of the case are that on 2.7.1999 FIR (Ex. P/2) was lodged by mother of the prosecutrix namely Hirmaniya Bai PW-4 alleging in it that prosecutrix about 10 to 12 years of age is her daughter, who is unsound mind from birth. She states that

approximately 4 to 5 months before lodging the FIR, accused/appellant- Manoj Kumar Singh taking advantage of unsound mind prosecutrix and committed sexually intercourse with her, as a result of which the prosecutrix became pregnant. It is also stated that when the pregnancy developed, the villagers came to know about the incident and then a Panchayat was held in the village. After enquiry by Panchayat before Kutru Bai (PW-1) and Ram Kumar Yadav (PW-2), the prosecutrix narrated the name of this accused/appellant stating that he has committed rape on her, and because of which, the FIR was lodged against this accused/appellant bearing FIR No. 40/1999 for the offence punishable under Section 376(1) of IPC. The prosecutrix was medically examined by Dr. Pratibha Jain (PW-9) vide Ex. P/6-A who found prosecutrix was unsound mind girl and her secondary sex organ has fully developed and was carrying 28 weeks pregnancy. Dr. M. K. Jain (PW-11) Radiologist examined the prosecutrix about her age (ExP/8) and he opined that her age is in between 17 to 19 years. The accused/appellant was also medically examined by Dr. O.P. Shrivastava (PW-10) and was found to be capable of performing sexual intercourse.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 21 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The trial Court has also examined one witness- Ruchanram as a court witness.

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.
5. Learned counsel for the appellant/accused submits that the prosecutrix has not made any specific allegation against the appellant regarding rape on her, if any sexual intercourse made by the accused/appellant, it is a matter of consent between accused/appellant and prosecutrix. A radiologist report also shows that the prosecutrix was not a minor girl at the time of incident and her mental illness was also not examined by any medical expert.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality in the same warranting interference by this Court. He submits that present is a case where an unsound mind girl has been subjected to sexual intercourse by the appellant and as a result of which she became pregnant. A D.N.A. report Ex.P/18 given by PW-20 Dr. S. C. Shukla, proved that the accused/appellant is the biological father of that fetus(Child), therefore, he has rightly been convicted and sentenced by the trial Court.
7. Heard learned counsel for the parties and perused the material available on record.
8. Firstly the court would consider the facts produced by the prosecution regarding the age of the prosecutrix. Hirmaniya

Yadav (PW-4), the mother of the prosecutrix has stated in paragraph 1 of her deposition that her daughter was 10 to 12 years of age at the time of incident, but in cross-examination, she has admitted that she does not have any written document regarding the age of the prosecutrix. Kutru Bai (PW-1) has admitted in para- 5 of her deposition that at the time of incident, the age of the prosecutrix is 20 years approximately and Sonikaliya Bai (PW-3) also stated in para-2 of her deposition that at the time of incident, the age of the prosecutrix is 20 years approximately. According to the above-mentioned facts stated by the villagers and the mother of the prosecutrix, the age of the prosecutrix on the date of incident is not below than 18 years.

9. The radiologist Dr. M. K. Jain (PW-11) did ossification test regarding the age of the prosecutrix and found the age of the prosecutrix between 17 to 19 years at the time of incident vide ExP/8.
10. In view of the entire oral evidence and ossification test vide Ex.P/8, it is proved that the prosecutrix was not below than 18 years of age.
11. Regarding unsound mind of the prosecutrix, PW-4 Hirmaniya Bai, the mother of the prosecutrix, in para-1 of her deposition has stated that the prosecutrix was insane from the birth. Kutru Bai (PW-1) deposed in para-1 that prosecutrix was not mentally fit from her child hood and that version of prosecution witness is not challenged in her cross-examination. Kendal Ram(PW-7) in Para- 1 & 3 has also deposed that the prosecutrix was insane from her birth. A common prudence of a citizen can also describe the

unsound mind of a person.

12. PW-9 Dr. Pratibha Jain vide Ex. P/6, found prosecutrix is not mentally fit. She is carrying pregnancy of 28 weeks. In her cross-examination she admitted regarding mental illness of the prosecutrix but was not given any reason on this report. PW-21 Dr. (Smt.) S. P. Jaiswal also stated in para 5 of her deposition that when she examined the prosecutrix, she did not appear to be of sound mind by her conduct and behavior. Dr. Azad Bharat (PW/13) also stated in para 6 of his deposition that the prosecutrix was not seen normal because she was abnormal. Even when the prosecutrix was examined in the Court room, she was abnormal, mentioned in the judgment of the trial Court.
13. Dr. M. K. Goyal (PW-14) sent aborted fetus for DNA test with the blood sample of prosecutrix and accused/appellant to Central Forensic Science Laboratory, Calcutta. A report Ex.P/18 given by PW-20 Dr. S. C. Shukla, proved that the accused/appellant is the biological father of that aborted child. DNA report (ExP/18) is also a conclusive proof given by the prosecution that the accused/appellant was the biological father of the aborted child.
14. As discussed above, it is found that the prosecutrix was unsound mind and she was not in a position to understand her wellbeing, because of her mental condition, the accused/appellant took advantage of her and made relation with her.
15. Looking to the mental condition of the prosecutrix, it can not be said that the prosecutrix must have given her consent or she was consenting party to the offence, and there is no specific evidence

regarding the consent given by the prosecutrix.

16. Thus, considering the overall evidence on record, this Court is of the opinion that the prosecution on the basis of evidence adduced by it has been successful in proving that it is the accused/appellant committed rape with the prosecutrix and clearly proved guilty of offence under Section 376 (1) of IPC. Being so, his conviction under Section 376 (1) of IPC is based on just and proper appreciation of the evidence and deserves to be affirmed.

17. In the result, the appeal being without any substance fails and is accordingly, dismissed.

18. The appellant is reported to be on bail, his bail is canceled. The trial Court shall issue a non-bailable warrant of arrest against the appellant and after arrest, appellant be sent to jail immediately for serving the remaining part of the sentence.

Sd/-

(Gautam Chourdiya)
Judge