

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 253 of 2011

Om Prakash Choudhary @ Karan S/o Shiv Prasad, aged about 24 years, R/o village Pateratola, Amarpur, PS. Pendra, District Bilaspur (CG)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Pendra, District Bilaspur

For Appellant : Mr. Dharendra Mishra, Advocate.

For State/respondent : Mr.Lav Sharma, Panel Lawyer.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

12/12/2018

1. This appeal is preferred against the judgment dated 27.1.2011 passed by the Additional Sessions Judge(FTC), Pendra Road, District Bilaspur(C.G.) in Session Trial No. 21/2010, wherein the said court convicted appellant for commission of offence under Sections 363, 366, 366(A), 376(1) of IPC and sentenced to undergo R.I. for 7 years and fine of Rs. 100/-, R.I. for 7 years and fine of Rs.100/-, R.I. for 7 years and fine of Rs.100/- and R.I. for 7 years and fine of Rs.100/- with default stipulations.
2. In the present case, prosecutrix is PW-4. As per the case of prosecution, the prosecutrix is aged about 13-14 years and she is minor reading in Class 6th. On 6.2.2010, she went to School but did not return to home. It is alleged that the appellant kidnapped her when she was easing herself in the field on the pretext that her mother is ill. Then he took her to

village Dhangava and other places and committed sexual intercourse with her. As the prosecutrix was minor aged about 13-14 years, she was not competent to give her consent. The matter was reported and investigated and appellant was charge sheeted. After completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits that version of the prosecutrix is not reliable and other piece of evidence is also suspicious therefore, finding recorded by the trial Court is liable to be set aside.
4. I have heard learned counsel for the parties and perused the record of the trial Court.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court invoking jurisdiction of the appeal.
6. Kunwariya Bai (PW6) is mother of the prosecutrix. As per version of this witness age of the prosecutrix is 13 years. Sarodhan Singh God(PW7) is father of the prosecutrix and as per version of this witness, age of the prosecutrix is 14 years. As per version of Kunwariya Bai (PW6) and the prosecutrix, she is a student of Class 6th. Version of this witness is unshaken during cross-examination, therefore, from the evidence of all these witnesses, it is established that the prosecutrix is aged about 13-14 years and she was minor on the date of incident i.e. 6.2.2010. As per version of the

prosecutrix, the appellant taken her from the field on the pretext that her mother is ill. On his pretext she accompanied him upto Pendra. Again he took her to village Kodwahi where he committed intercourse with her. He again taken her to Korba and committed intercourse with her. Version of this witness is unshaken during incisive cross-examination and her version is supported by the version of other witnesses that on the date of incident prosecutrix was not returned to home. Version of this witness is further supported by Dr.Devendra Singh Paikara (PW5) who examined the appellant and found him capable of committing intercourse. The prosecutrix returned after 4 days of the incident and thereafter report was lodged on 11.2.2010, therefore, it appears that there is no delay in lodging the report.

7. Statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par and when her evidence is inspiring confidence, no corroboration is necessary.
8. It is true that the report has been lodged after 4 days of the incident. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight

of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is delay in lodging FIR.

9. After assessing the evidence, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. The trial Court has considered all the material aspect elaborately and this Court has no reason to substitute a contrary finding. Offence committed by the appellant is punishable under Sections 363,366, 366(A) and 376(1) IPC, for which the trial Court has convicted and the same is hereby affirmed.

10. Heard on the point of sentence:

The trial court has awarded minimum sentence for offence under Section 376 (1) of IPC and less than minimum cannot be awarded. The trial Court has awarded sentence of R.I. for 7 years, which cannot be termed as harsh, disproportionate or

unreasonable and the same is not liable to be interfered with.
The sentence part is also not liable to be interfered with.
Accordingly, the appeal is liable to be and is hereby
dismissed.

11. It is reported that the appellant has suffered full term of his jail sentence and has been released, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
Judge