

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1940 of 1999**

Bhaiyaram, S/o. Govind Ram, Aged about 20 years, R/o. Village Barbhatha, Police Station Bilaigarh, District Raipur Chhattisgarh

---- Appellant**Versus**

State of Madhya Pradesh, Through Police Station Bilaigarh, District Raipur Chhattisgarh

----Respondent

For Appellant	:	Mr. Aditya Khare, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/04/2018**

1. The present appellant stands convicted for the offence under Section 376 of Indian Penal Code and has been convicted to undergo rigorous imprisonment for 7 years with fine Rs.5000/- with default stipulation of 1 year rigorous imprisonment.
2. The appellant stood convicted vide judgment dated 01.02.1999, passed by the 1st Additional Sessions Judge, Baloda Bazar, District Raipur, Chhattisgarh (as it then was), in Sessions Trial No. 89/1988.
3. As per the prosecution case, on 04.01.1988, the present appellant is said to have caught hold of PW/1, a minor girl, aged between 10-15 years, in the field where the prosecutrix had gone in the evening for collecting firewood and after forcefully dropping her down on the ground, the present appellant is said to have forcefully committed sexual intercourse and thereafter fled from the scene. The prosecutrix immediately after the incident is said to have reached the home and informed her mother PW/3-Shukwara Bai, so also her grandmother PW/2-Ramin Bai. Since, it was already dark on

04.01.1988, the F.I.R. was lodged on next day morning at Police Station Bilaigarh, where the offence was registered as Crime No.5/1988 and the present appellant was prosecuted for the offence under Section 376 of Indian Penal Code. The prosecution in all examined 13 witnesses. The main witnesses examined by the prosecution are the prosecutrix herself as PW/1 and the grandmother and mother of the prosecutrix as PW/2 & PW/3 respectively. In addition, PW/11-Dr. Veena Chandra, the Doctor who had conducted the medical examination of the prosecutrix was also examined. Finally, the trial Court vide the impugned judgment has found the appellant guilty of the offence under Section 376 of Indian Penal Code and has passed the judgment of conviction and sentence against the present appellant.

4. The contention of the counsel for the appellant is that the entire story of the prosecution is baseless as there is no strong material evidence collected by the prosecution during the course of the investigation with which the case of the prosecution could be said to have been proved beyond reasonable doubt. He further submits that all the material witnesses examined before the trial Court were all interested witnesses and therefore on this ground also the statement of the interested witnesses could not have been relied upon for convicting the appellant. The counsel for the appellant further doubted the prosecution case to the extent of the prosecutrix being a minor girl and it was also contended that even the Doctor has not given a conclusive statement of the prosecutrix having being subjected to intercourse on 04.01.1988. Thus there is no medical

evidence also in support of the prosecution with which the present appellant could have been convicted.

5. The State counsel opposing the appeal drew the attention of this Court to the statement of the Doctor-PW/11, wherein the Doctor has categorically stated that the hymen of the prosecutrix was slightly torn. Likewise, the Doctor has also opined that menstruation cycle of the prosecutrix also had not started, which also further establishes the fact that the prosecutrix was a minor. The State counsel further drew the attention of the statement of PW/3 and PW/2, the mother and grandmother of the prosecutrix, to whom the prosecutrix had immediately confided and the statements of these two witnesses fully corroborate the statement of prosecutrix and it also corroborates with the contents of the F.I.R., thus there is ample evidence produced by the prosecution to prove the case against the present appellant beyond all reasonable doubts. Lastly, the State counsel drew the attention of exhibit P/15, the chemical examination report of the clothes which were seized worn by the prosecutrix as well as the present appellant and where in the course of the examination, the experts have found human sperm available on the articles A, B and C. A and B being the dress of the prosecutrix and C being the dress of the present appellant. Thus, it cannot be said that there was any lapse or lacuna on behalf of the prosecution in conducting of the case and therefore prayed for rejection of the appeal.
6. Having heard the contentions put forth on either side and on perusal of the record, undisputedly an F.I.R. was lodged on 05.01.1988 in the morning at Police Station Bilaigarh. The F.I.R. reflected to an

incident that took place on the previous night i.e. in the night of 04.01.1988.

7. The victim in the said F.I.R. was PW/1. Statement of the PW/1 was recorded during the course of investigation and also was examined before the trial Court and where the contents of the statement of the prosecutrix PW/1 before the Court, before the police authorities at the time of lodging of the F.I.R. and also the statement recorded during the course of investigation is consistent. There is not much variation, contradiction and omission in the statement of the prosecutrix. The statement of the prosecutrix gets further strengthened from the statements of two persons to whom the prosecutrix had confided about the incident on the same date i.e. in the evening of 04.01.1988 i.e. the PW/2-the grandmother Ramin Bai and the PW/3-the mother Sukwara Bai.
8. The allegation of having committed rape by the present appellant also stands sufficiently established from the chemical examination report exhibit P/15, where the expert has given a positive report of the finding of human sperm on articles A, B and C in the said exhibit, which were the dress worn by the prosecutrix as well as the present appellant.
9. So far as the age of the prosecutrix is concerned, the statement of PW/11-the Doctor reflects the fact that the menstruation cycle of the prosecutrix had not started. Likewise, the ossification test conducted of the prosecutrix also reflects the prosecutrix to be between 13-14 years. Thus, in the given facts, it appears to have been sufficiently proved of the fact that the prosecutrix was a minor at the time of incident. Further, from the cross-examination of the prosecutrix so

also of the two witnesses PW/2 and PW/3, there does not appear to be much, which has been extracted by the defense with which it could be said that the present appellant has been falsely implicated in the criminal case, nor is there any evidence of any old enmity between the family of the present appellant and the family of the prosecutrix.

10. Given the aforesaid facts and circumstances of the case, particularly the statement of the prosecutrix and there being not much with which the statement of the prosecutrix and the other witnesses examined to be doubted for, this Court is of the opinion that the prosecution in the present case has been able to establish its case beyond all reasonable doubts and this Court does not find any strong material made out calling for an interference with the impugned judgment of conviction and sentence.
11. The appeal thus being devoid of merit deserves to be and is accordingly rejected.
12. The appellant seems to have been on bail. The same stands cancelled and it is ordered that the appellant may be taken into custody forthwith for undergoing the remaining part of the sentence.

Sd/-
(P. Sam Koshy)
Judge