

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 297 of 2010

State of Chhattisgarh through the District Magistrate, District Kanker
(C.G.)

--- APPELLANT

Versus

Devlal, S/o. Ram Singh, Aged about 26 years, Occupation Agriculturist,
R/o. Village Junvani, P.S. Kanker, District Kanker (C.G.)

---- RESPONDENT

For the Appellant :- Mr. Rajendra Tripathi, Panel Lawyer
For the Respondent :- Mr. D.N. Prajapati, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

19.06.2018

1. This acquittal appeal arises out of judgment of acquittal rendered by the Sessions Judge, Kanker, acquitting the accused for offence under Section 376(1) and 506 Part II of the IPC.
2. The case of the prosecution, as projected in the FIR and in the charge sheet is that at about 4.30 pm on 23.06.2006, the prosecutrix and her friend Bhawani had gone near the school for plucking *Kusum*, a locally grown fruit. After some time, they were climbing on small hill when the accused came and caught hold her right hand and forcibly took her to a place between two stones

(cave like structure) and committed forcible sexual intercourse because of which her private part started bleeding. On the information of Bhawani, her father reached the spot, on seeing whom, the accused Devlal ran away from the place of occurrence. The FIR was lodged at about 9.55 pm on the next morning i.e. on 24.06.2006.

3. The prosecutrix was sent for medical examination on 24.06.2006 itself which was conducted by PW-10 Dr. Sarita Kumeti, who has proved the medical report Ex.P-24. After collecting necessary documents concerning the age of the prosecutrix and recording the case diary statements charge sheet was filed for offence under Sections 376(1) and 506 part II of the IPC.
4. The trial Court has acquitted the accused on the ground that the prosecution has failed to prove that the prosecutrix was less than 16 years of the age on the date of incident and there being exaggeration and embellishment in the statement of the prosecution witness, the prosecution has failed to prove the case against the accused beyond all reasonable doubt.
5. Shri Rajendra Tripathi, learned State counsel has assailed the impugned judgment. He has taken us through the entire evidence to demonstrate that the finding recorded by the trial Court is perverse.
6. On the other hand, Shri D.N. Prajapati, learned counsel for the respondent would support the impugned judgment.

7. We have heard learned counsel for the parties at length and perused the record.
8. For proving the age of the prosecutrix, the prosecution has not produced the berth certificate or any other certificates whose author has been examined in the Court. In Dakhilkharij register Ex.P-13, age of the prosecutrix is recorded as 16.04.1993. However, PW-4 Anuj Kumar Sahu, the teacher who produced the register in the Court did not bring the declaration form signed by the father of the prosecutrix, so that it can be known that it was he who had informed the school authorities about the date of birth of the prosecutrix. In the ossification test report Ex.P-14, her approximate age was mentioned as 12 to 14 years. It is settled law that there can be variance of up to 2 - 3 years on either side of this approximate age, therefore, the prosecution has not conclusively proved that the age of the prosecutrix was less than 16 years on the date of incident.
9. In the FIR lodged by the prosecutrix, as well as in the case diary statement of the prosecutrix and her father, it is mentioned that due to forceful intercourse she was bleeding on her private part. But PW-10 Dr. Sarita Kumeti, has not found any such bleeding or injury in her report Ex.P-24. PW-10 Dr. Sarita Kumeti, has also found that the prosecutrix is habitual to sexual intercourse and that there was no internal or external injury except some redness over the private part which can happen for many other reasons.

10. Having examined the impugned judgment along with the evidence, we are not persuaded to take any different view of the matter. The trial court has considered all relevant evidence in its right perspective to hold that the prosecution has failed to prove its case beyond all reasonable doubt. Considering the scope of interference in Acquittal appeal, we are satisfied that the present is not a case where any interference is called for in the impugned judgment. Consequently, the acquittal appeal deserves to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Vimla Singh Kapoor