

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 24 of 2010**

Ramcharitra Kaser son of Mahajan Kaser, aged about 19 years, Resident of village Khodri, Police Station Udaypur, District Surguja (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through The Police Station Udaypur, District Surguja (CG)

---- Respondent

For Appellant : Shri Ashok Kumar Shukla, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****05/10/2018**

1. This appeal is preferred against the judgment dated 9.12.2009 passed by the 3rd Additional Sessions Judge(FTC), Surguja at Ambikapur (CG) in Sessions Trial No.317/2008, wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366-A and 376(2)(f) read with Section 511 of the IPC and sentenced to undergo R.I. for 7 years and fine of Rs.500/-; R.I. for 10 years and fine of Rs.1000/- and R.I. for 10 years and fine of Rs.1000/- respectively with default stipulation. All the sentences were directed to run concurrently.

2. As per the prosecution case, the appellant enticed the minor prosecutrix and procure her to go from other place knowing that she will be seduced to illicit intercourse and attempted to commit rape on her on 18.9.2008 at about 4.00 pm at village Khodri, Police Station- Udaypur, District Surguja (CG). The prosecutrix aged about 4 years was playing in front of her house and at the same time, the appellant took her away from the lawful guardianship of her parents and she has been procured for providing to maize field and thereafter, the appellant tried to commit rape on her. The matter was reported and investigated and after completion of trial, the appellant was convicted and sentenced as above.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits as under :

(i) The prosecutrix has not been examined before the trial Court, therefore, the charges are not established;

(ii) Though one eye-witness has been examined to establish the guilt, but his version is full of contradictions and same is not a reliable piece of evidence;

(iii) Even otherwise at the most it would be a case under Section 354 IPC and other charges are not proved by the evidence of the eye-witness.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of oral and documentary evidence which is just and proper and the same is not liable to be interfered with invoking jurisdiction of appeal.

6. To substantiate the charge prosecution has examined as many as 6 witnesses.

7. As per order sheet of the trial Court dated 25.9.2009, the prosecutrix appeared before the trial Court, but as she was unable to speak regarding the incident she was not examined. The case of the prosecution is based on the statement of Anuj Kumar (PW3), who is sole eye-witness of the incident and as per version of this witness, he was playing with the prosecutrix in the house of appellant. He deposed that the appellant came on the spot and procured the prosecutrix for providing her to maize field and in his kitchen garden, he made her lay down, removed her clothes and committed bad work. As per version of this witness, the appellant himself has removed his undergarments. This witness was subjected to searching cross-examination, but from his entire version it cannot be inferred that he is a tutored witness. He has simply denied that he deposed against the appellant on account of tutoring by his father or by the counsel.

8. In the present case, date of incident is 18.9.2008 and the matter was reported to Police Station, Udaypur next day i.e. on

19.9.2008, in which, name of the appellant is mentioned as culprit. Version of Anuj Kumar (PW3) is recorded on next day of the incident by the Investigating Officer in which he has stated about the incident and he is firm to his version right from the day of incident to deposition before the Court.

9. Dr. Lata Goyal (PW6), who has examined the prosecutrix has opined that no injury mark was found on her body and on her private part. Looking to the version of eye-witness and the medical evidence, the trial Court opined that it is not a case of rape, but looking to the act committed by the appellant, it is a case of attempt to commit rape. An attempt may be described to be an act more than mere preparation but falling short of actual consummation. Considering the evidence of the eye-witness, it is established that the appellant had shown progress for commission of offence and therefore, finding of the trial Court regarding commission of attempt to rape is based on direct and medical evidence and this Court has no reason to record a contrary finding. Accordingly, conviction of the appellant for commission of offence under Sections 363, 366-A and 376(2)(f) read with Section 511 IPC is hereby affirmed.

10. Heard on the point of sentence :

The appellant had suffered jail term from 22.9.2008 to 7.4.2011 i.e. more than 2 ½ years. Corporeal punishment awarded by the trial Court is reduced to the period already undergone by him, while the fine amount imposed by the trial Court shall remain intact.

The appellant is reported to be on bail. His bail bonds shall continue for a period of six months in view of Section 437-A Cr.P.C.

11. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)

JUDGE