

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 391 of 2010

Tulsiram Mishra, S/o. Narmada Prasad Mishra, Aged about 50 years, R/o. Village Palra, Post Bairangpur, Police Station and District Koshdi (Uttar Pradesh).

At present R/o. Village Dansesara, Police Chowki Jevra Sirsa, Police Station Pulgaon, District Durg, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, Through: the Station House Officer, Police Station Pulgaon, District Durg, Chhattisgarh

---Respondents

For Appellant	:	Mr. Vikas A. Shrivastava, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/06/2018

1. The present appeal has been filed assailing the judgment of conviction dated 22.03.2010, passed by the 11th Additional Sessions Judge (F.T.C.) Durg, Chhattisgarh in Sessions Trial No. 165/2008.
2. Vide the impugned judgment, the appellant herein has been sentenced to undergo rigorous imprisonment for 10 years for the offence under Section 376(1) of the Indian Penal Code with fine of Rs.1000/- and also sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.1000/- for the offence punishable under Section 377 of the Indian Penal Code with default stipulation.
3. The case of the prosecution in brief is that the present appellant was a priest (पुजारी) of a temple at Ramkrishna Temple at village Dandesara under police outpost Jevra Sirsa under Police Station Pulgaon, District Durg. It is said that on the date of incident i.e. on 15.07.2008 when the

prosecutrix along with her sisters were going to school, enroute they had gone to the temple to take *prasad*, the present appellant, who was the priest, gave some money to the sisters of the prosecutrix and they left for school, meanwhile the present appellant is said to have retained the prosecutrix in the temple and there he is said to have ravished the prosecutrix and have also subjected to have oral sex.

4. The prosecutrix subsequently on the same day in the evening is said to have informed her mother Smt. Sarita Bai PW/2 in respect of the incident and on the basis of which later on a complaint was lodged and the present appellant was prosecuted for the offence under Sections 376(1) and 377 of the Indian Penal Code.
5. The prosecution in all examined as many as 9 witnesses and there was no eyewitness examined on behalf of the defense. Later on the Court below found the appellant guilty of having committed the offence for which he has been charged and has been sentenced to undergo rigorous imprisonment as has been envisaged in the preceding paragraph of this judgment.
6. The contention of the counsel for the appellant is that he has falsely been implicated in the instant case and that there is no substantial evidence so far as physical rape having being committed with the prosecutrix. The medical opinion also goes against the prosecution in as much as the Dr. Mamta Pandey (PW/7) has categorically given a report of there being no material to establish that the prosecutrix being subjected to rape in as much as the hymen was found to be intact and there was no injury of any nature detected. That for the said reason

itself the counsel for the appellant prays for setting aside of the said judgment of conviction with the benefit of doubt given to the appellant.

7. However, the State counsel opposing the appeal categorically submitted that the prosecutrix in the instant case was a 7-8 years old child and that there is no allegation of any animosity between the appellant and the family members of the prosecutrix. Neither is there any defense of the present appellant being falsely implicated for some extraneous consideration raised or established before the trial Court and therefore the findings of the trial Court cannot be held to be bad in law.
8. Having heard the contentions put forth on either side and on perusal of record, particularly taking into consideration the evidence of the prosecutrix (PW/1), it cannot be lost sight of the fact that the prosecutrix is a 7 years old child. There is no reason why the prosecutrix would make false allegations against the present appellant, particularly in the light of there being no animosity between the family members of the prosecutrix with the present appellant. Moreover the statement of the prosecutrix also stands supported by the mother, to whom the prosecutrix had for the first time confided so far as the occurrence of the incident is concerned. The evidence of the PW/1 and PW/2 stands corroborated from the evidence of Jagat Ram (PW/3) and Santosh Kumar (PW/4), who have categorically stated before the trial Court of being informed by the mother of the prosecutrix in respect of the occurrence of the incident and also have stated the fact that subsequently the village meeting was also called in this regard, wherein the prosecutrix was also present and who had clearly deposed before the people of the appellant having ravished her.

9. Given the aforesaid facts and circumstances in the case, particularly the evidence of the witnesses PW/1 to PW/4 which stands un-rebutted by the appellant in cross examination and that the appellant having failed to bring out any reason as to why the prosecutrix or the family members of the prosecutrix would make a false allegation or a false story against the present appellant, the finding of the trial Court does not warrant any interference and the appeal being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved