

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1181 of 2013**

(Arising out of judgment dated 18.07.2012 in Sessions Trial – 18/2012
passed by learned First Additional Session Judge, Mahasamund)

- Manharan @ Konda Yadav S/o Shri Markandey Yadav Aged About 50 Years R/o Village Patewa, P.S.- Tumgaon, Civil And Rev. Distt. Mahasamund, C.G.

----- Petitioner**Versus**

- State Of Chhattisgarh Through Distt. Magistrate, Mahasamund, Through P.S. Tumgaon, Civil And Rev. Distt. Mahasamund, C.G.

----- Respondent

For appellant : Shri Roop Naik, Adv.
For State : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Mr. Sharad Kumar Gupta, Judge**JUDGMENT ON BOARD****14.07.2018**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 18.07.2012 passed by the First Additional Session Judge, Mahasamund in Sessions Trial No. 18/2012 whereby and whereunder he convicted the appellant as under :

Offence	Sentence	Default of payment
342 of IPC	R.I. 6 months	
363 of IPC	R.I. 3 years and fine of Rs. 1,000/-	R.I. for one month
376(2)(f)/511 of IPC	R.I. 5 years and fine of Rs. 1,000/-	R.I. for one month

2. In brief the prosecution story is that at the time of the incident prosecutrix was near about 8 years old and resident of village – Patewa. On 7.2.2012 near about 17:00 hours the prosecutrix was playing with other children near the house. The

appellant reached there and forcefully taken away her in his house and locked the door from inside. Thereafter, he repeatedly tried to insert his penis into her vagina. The mother of the prosecutrix Smt. Temin Bai Yadav lodged First Information Report on very day at about 09:30 pm in Police Station – Tumgaon. After completion of the investigation charge-sheet has been filed against the appellant. The Trial Court framed charges against appellant under Sections 342, 363, 372(2)(f) of the IPC. The appellant abjured the charges levelled against him and faced trial. To bring home the charges the prosecution examined as many as 9 witnesses.

3. The appellant did not examine any witness on his defence.
4. After conclusion of the trial, the trial Court convicted and sentenced the appellant as aforesaid. Being aggrieved by the judgment of conviction and order of sentence, the appellant has preferred this criminal appeal.
5. A report dated 05.05.2018 from the office of Superintendent, Central Jail, Raipur has been received as per which the appellant has been released on 17.12.2015 on completion of sentence, getting benefit of remission. The appellant has also deposited the imposed fine amount.
6. Learned counsel for the appellant submits that there is no evidence against the appellant. The appellant is innocent and has been falsely implicated. Hence the appeal may be allowed and he be acquitted of the charges.
7. Per contra, learned State counsel supported the impugned judgment of conviction and order of sentence and submitted that

the appellant has rightly been convicted and sentenced on the basis of the evidence available on record.

8. As per the medical examination report Ex. P8, PW5 Dr. Vipin Kumar Rai had examined the appellant on 08.02.2012 and found that he was able to perform sexual intercourse.

9. There is no such evidence on record on the strength of which it could be said that Ex. P8 is unbelievable, thus this Court believes on Ex. P8.

10. As per the paper Ex. P12 the date of birth of the prosecutrix is 23.06.2004 as informed by Dhani Ram.

11. There is no such evidence on record on the strength of which it could be said that Ex. P12 is unbelievable, thus this Court believes on Ex. P12.

12. PW2 the prosecutrix says that she is studying in class II. The appellant had taken away her forcefully in his house. Locked the house. He attempted so many times to insert his penis into her vagina.

13. PW3 Jharna says in para 1 and 2 of her statement given on oath that the appellant had taken away the prosecutrix forcefully in his house. Locked the house. Prosecutrix had told her mother that the appellant was trying to insert his penis into her vagina.

14. PW1 Temin Bai who is mother of the prosecutrix says in para 1 of her statement given on oath that Jharna had intimated to her that the appellant had confined the prosecutrix in his house. The prosecutrix had told her that appellant had taken

away her saying that he will give Rs. 10/-, he had taken her in his house. He was trying to insert his penis into her vagina.

15. There is no such evidence on record on the strength of which it could be said that the aforesaid statements of PW1 Temin Bai, PW2 the prosecutrix and PW3 Jharna are not simple, not natural, not normal.

16. Looking to the above-mentioned circumstances, this Court finds that the trial Court has not committed any error in convicting and sentencing the appellant as mentioned above.

17. Thus, the appeal being devoid of substance, deserves to be and is hereby dismissed.

18. As the appellant has already been released on 17.12.2015 on completion of the jail sentence, getting benefit of remission, no further order is required.

Sd/-

(Sharad Kumar Gupta)
Judge