

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 515 of 2015

- Ramcharit Tandiya S/o Motilal Tandiya, Aged About 25 Years, R/o Tanki Dafai Ward No. 8, North Jhagrakhand, Police Station Jhagrakhand, District Korea Chhattisgarh Permanent R/o Village Karauti, Police Station Kusmi, District Sidhi M.P., Madhya Pradesh

---- Appellant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Jhagrakhand, District Korea Chhattisgarh. , Chhattisgarh

---- Respondent

For Appellant – Shri L.C. Dash, Advocate.

For Respondent/State – Shri Sanjeev Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

14-04-2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 15-01-2015 passed by the Additional Sessions Judge (FTC), Baikunthpur, District Korea, C.G., in Sessions Trial No.37/2014 whereby the appellant has been convicted under Sections 450 of the IPC and Section 376 of the IPC read with Section 3-A, 4 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act') and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5000/- and R.I. for 10 years and to pay fine of Rs.5,000/-, respectively, with default stipulation for each default in payment of fine.

2. The prosecution case in brief is this that the prosecutrix was aged about 15 years on the date of incident and the appellant was her uncle in relation. On 15-11-2013 the prosecutrix was alone in her house, the appellant by use of force raped her and threatened her with dire consequences in case she disclosed about the incident to anybody. Subsequent to this incident, the prosecutrix out of frustration poured kerosene oil over her body and set herself ablaze. At that time, the fire was put out by the appellant who was present on the spot. The prosecutrix was

admitted to the hospital and on her information unnumbered FIR (Ex.-P/1) was recorded, on that basis a numbered FIR (Ex.-P/9) was recorded later on. The offence were registered against the appellant and investigation was conducted. After completion of the investigation, charge sheet has been filed against the appellant. The trial Court charged the appellant for the offences under Section 450, 376, 506 Part II of the IPC and Section 3-A read with Section 4 of the POCSO Act. The appellant denied the charges and prayed for trial.

3. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. One witness was examined in defence.

4. On completion of the trial, impugned judgment has been passed convicting and sentencing the appellant as mentioned hereinabove.

5. It is submitted by learned counsel for the appellant that erroneous judgment of conviction has been passed against the appellant on the basis of unreliable evidence of the prosecution. According to the prosecution case, the date of incident was 15-11-2013, whereas, the FIR was lodged on 23-11-2013 after delay of about 8 days, for which, no explanation was offered by the prosecution or witnesses. The date of birth of the prosecutrix according to the school entry register, has not been proved or exhibited, which is demonstrated from the statement given by M.P. Mishra (PW-2). The statement of the defence witness has not been examined by the trial Court, who has clearly stated that the appellant has been falsely implicated on account of enmity with father of the prosecutrix. Hence, no case was made out for conviction of the appellant. Therefore, it is prayed that the appeal may be allowed and the appellant may be acquitted from the charges.

6. On the other hand, State counsel opposes the submission made and submits that the prosecution has proved its case beyond reasonable doubt. The statement of the prosecutrix (PW-1) is supported by the statement given by

Narayan (PW-4) and the medical evidence of Doctor Archana Kumhare (PW-5). The delay in lodging the FIR is though not explained, but the trial Court has analyzed the cause of delay and come to the conclusion that in such cases delay is not fatal. Hence, no case is made out for acquittal of the appellant.

7. Heard counsel for the respective parties and perused the material on record.

8. The question in this case is this, whether the prosecution has succeeded to prove its case beyond reasonable doubt.

9. The prosecutrix (PW-1) stated that on the date of incident the appellant forced his entry into her house and raped her and thereafter he alleged that the prosecutrix is having physical relation with her cousin brother, because of which, she poured kerosene oil over her body and set herself ablaze. On that the appellant poured water on her body to extinguish the fire, because of which, she was admitted to the hospital. With the permission of the Court leading question was put to this witness, on which, she stated that she narrated about the incident to her father. When the policemen came to the hospital she gave information according to which Ex-P/1, the unnumbered FIR was recorded. In her cross-examination, her statement about the incident of rape committed by the applicant has remained unrebutted and there is no other statement in the cross-examination to suggest that the statement given by her is false in any manner.

Narayan (PW-4) has stated that he came to know that his daughter, the prosecutrix has suffered burn injuries. When the prosecutrix was admitted to the hospital for treatment, then on arrival of the policemen she made the statement before him that the appellant had raped her two to three times, because of which, she had burnt herself. He has remained firm on this statement in his cross-examination, although he is a hearsay witness. Investigating Officer Shivendra Rajput (PW-7) stated that he received information that a minor girl is admitted to the hospital for treatment of burn injuries, then he arrived in the Manedragarh hospital and on basis of the information given by the prosecutrix, an unnumbered FIR (Ex.-P/1) was recorded and on that basis later on a numbered FIR (Ex.P/9)

was recorded and thereafter he has conducted remaining part of the investigation. The statement about lodging of the FIR on the basis of the information given by the prosecutrix has remained unrebutted in his cross-examination and he has made no admission to any of adverse suggestions given by the counsel for the defence. Hence, this witness, though a policeman, has been directly informed by the prosecutrix and according to her narration the FIR (Ex.-P/1) was lodged which is a statement of relevance. Doctor Archana Kumhare (PW-5) examined the prosecutrix on 24-11-2013 who was having 40 to 50 percent burn injuries. On initial examination she found that her hymen was ruptured giving entry to one finger, it was bleeding and having tenderness and in her opinion the rupture of hymen was 5 to 6 days prior to the date of examination and she opined that sexual intercourse has taken place with the prosecutrix vide her report Ex.-P/7. Her statement has remained unshaken in her cross-examination.

10. Another point to be examined in this case was majority of the prosecutrix and in that respect the prosecutrix (PW-1) stated herself that her date of birth is 07-09-1999, according to this date of birth, her age on the date of incident was 14 years and two months. In cross-examination this statement remained unchallenged. Although M.P. Mishra (PW-2) examined by the prosecution to prove the entry in the school register, but he has not given any clear evidence to prove the same. Narayan (PW-4), father of the prosecutrix, has stated that age of her daughter, the prosecutrix, is about 14 to 15 years and his statement remained unrebutted in his cross-examination. Doctor Archana Kumhare (PW-5) stated that age of the prosecutrix was about 15 years on the date of her examination. Although no specific proof has been brought by the prosecution on documentary basis to prove the date of birth of the prosecutrix, but the statements of these witnesses which have remained unchallenged by itself is sufficient to prove that the prosecutrix was minor on the date of incident. Further, the statement given by Doctor Archana Kumhare (PW-5) that the prosecutrix had 14-14 teeth in upper and lower jaw of mouth in her report Ex.-P/7, which has not been challenged, is also a

statement in support to prove that the prosecutrix was minor on the date of incident.

11. Abhimanyu (DW-1) has stated about the incident in which the prosecutrix suffered burn injuries and stated that the appellant had some dispute with father of the prosecutrix and when he went to see the prosecutrix in the hospital, she has not stated anything before him about the incident of rape by the appellant.

The statement of enmity with the father of the prosecutrix may be there, but there is no other witness led by the defence for the offence as alleged by the prosecutrix in the investigation and in the evidence before the trial Court, and apart from that, in case the prosecutrix did not narrate about the incident to him that has taken place, it does not by itself falsify the statement of herself and other witnesses given in the investigation and before the Court. Hence, the statement of the defence witness has no force to rebut or falsify the evidence given by the prosecution witnesses.

12. After close scrutiny of the statements given by all the witnesses of prosecution and defence, I am of this view that the prosecution has proved its case beyond reasonable doubt and there is no scope for interference in conviction and sentence passed by the trial Court. Hence, on the basis of this finding, this appeal is dismissed.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE