

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1434 of 2016

- Raja @ Chetan Vishwakarma S/o Umesh Vishwakarma Aged About 21 Years R/o I.B.P. Mohalla Vikash Nagar, Police Station Kusmunda, District Korba, Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Kusmunda, District Korba, Chhattisgarh., Chhattisgarh

---- Respondent

For the Appellant : Mr. S.K. Guha, Advocate.

For the State/Respondent : Mr. Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

1.12.2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 1.8.2016, as mentioned in memo of appeal, passed by the Additional Sessions Judge, Katghora, District-Korba, Chhattisgarh, in Special Sessions Trial No.80/2014, convicting the accused/appellant under Section 376 of Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for 10 years with fine of Rs.1000/- with usual default clause.

2. The prosecution case, in brief, is this that as the mother of the prosecutrix PW-1 had expired, she was residing with her uncle. It is alleged that about 3 months prior to 19.9.2014 i.e. the date on which FIR was lodged, this appellant by administering some intoxicant to the prosecutrix PW-1 committed rape with her, who at the relevant point of time was about 14 years, and thereafter he continued to have sex with her on number of occasions. Subsequent to which the prosecutrix became mentally unsound and was taken to hospital and there for the first time she informed her uncle Santosh Pandey PW-3 and aunt Kusumlata PW-4 about the incident. A written complaint Ex.P -3 was given by Kusumlata Pandey PW-1, aunt of prosecutrix PW-3, in Police Station Kusmunda based on which FIR ExP-4 was lodged. Prosecutrix was medically examined vide report ExP-11 and it was found that she was subjected to sexual intercourse. According to school certificate of the prosecutrix, she was minor.
3. On completion of investigation, the charge sheet has been filed before the concerned Court where charges under Section 376 of IPC and Section 6 of POCSO Act were framed against the appellant and he denied the same and sought for trial. Appellant was examined under Section 313 of CrPC in which he denied all the incriminating evidence appearing against him, pleaded innocence and false implication. The trial Court, after hearing the parties and appreciating the evidence on record, convicted and sentenced the appellant in the manner as described above. However, he has been acquitted of the charge under Section 6 of the POCSO Act.

4. It is submitted by counsel for the appellant that the prosecution has failed to adduce clinching and cogent evidence to establish that at the time of incident the prosecutrix was minor. As per FIR, the incident took place three months prior to lodgement of FIR and there is nothing to show that during that period the prosecutrix was suffering from unsoundness of mind or she was mentally disabled and thus, she had all the opportunity to inform about the incident to her uncle & aunt, but she did not do so. Thus it is a clear that present is a case of consensual intercourse. As per evidence available on record, on becoming mentally unsound, the prosecutrix disclosed that she was ravished by this appellant which cannot be regarded as reliable statement. Santosh Pandey PW-3 has made statement that the prosecutrix used to say that she is having love affair with 3-4 persons and used to disclose their names also. Furthermore, the witnesses before whom the appellant had allegedly confessed his guilt, have not supported the prosecution case. Hence, no case is made out for conviction of the appellant and it is prayed that he may be acquitted. In alternative it is submitted that in case this Court reaches to a conclusion that the trial Court has rightly held the appellant guilty for the offence punishable under Section 376 of IPC, then a lenient view may be taken and the sentence imposed upon the appellant may be reduced to the period already undergone by him.
5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the

appellant.

6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt ?
8. Prosecutrix PW-1 has stated that on the date of incident she was studying for the examination at night and when she was all alone in her house, appellant came inside and stated that he loves her and then by force committed the offence of rape with her. She raised alarm but no one came for her rescue. Thereafter, the appellant threatened her that if she will disclose the incident anybody he would kill her and therefore due to fear she did not inform about the incident to anyone. Later on, when she became ill, she informed her aunt about the incident. She has stated that she went mentally upset and could not remember anything. Her aunt had lodged the FIR and informed the police that appellant had committed the offence of rape with her. In cross-examination, she has stated that appellant is well-known to her. She has denied the adverse suggestions given by defence counsel. She has admitted the suggestion given by defence that she got afraid because of the threat given by the appellant and did not disclose about the incident to her guardians immediately. She has also denied the suggestion that she did not raise any alarm. There is no other statement in her cross-examination to show that her statement in examination-in-chief has been contradicted or rebutted.

9. Kusumlata Pandey PW-2 is the aunt of the prosecutrix. She has stated that when the prosecutrix PW-1 became mentally unsound, at that time she informed that appellant had raped her. Regarding which she gave written complaint ExP-3 in the police-station on the basis of which FIR ExP-4 was lodged. In cross-examination, her statement has remained unrebutted. Santosh Pandey PW-3 appears to be hearsay witness, who was informed about the incident. He has stated that when the prosecutrix PW-1 became mentally unsound she took the name of the appellant on number of times and she also used to make incoherent statement that she is love with him when she was being treated in mental hospital at Sendari. The prosecutrix had made a clear statement that she was raped by the appellant. In cross-examination, there is no such statement to consider that his statement in examination-in-chief has been shaken or rebutted.
10. Ravi Kumar Soni PW4, Mani Ram Soni PW-5, Jash Kumar Soni PW-8 and Amarjeet Singh PW-13 are hostile witnesses who have not supported the prosecution case and made adverse statement because of which they have been discredited by the prosecution and declared hostile, hence, their statement as of no relevance.
11. Dr. Smt. S. Bhagat PW-9 examined the prosecutrix on 27.9.2014 and opined that the prosecutrix was subjected to sexual intercourse although she could not opine whether the intercourse was recent or not. In cross-examination, she has stated that she is unable to state whether the prosecutrix was mentally unsound at the time of physical examination or not and then she has made a clear statement that the prosecutrix was subjected to sexual intercourse only once. Inspector

Sadhna Singh PW-12 has proved the investigation. Dr. Satish Shrivastava PW-14 has stated that prosecutrix was mentally unsound between 30.9.2014 to 29.11.2014 as she was suffering from Mania with psychotic system.

12. After closely scrutinizing the evidence of the relevant prosecution witnesses, submission made by the counsel for appellant are considered.

13. In the written complaint ExP-3, it is clear statement that the incident had taken place about 3 months prior to the date of filing of complaint. Hence, there is definitely a delay in lodging FIR but it appears that delay has been explained, because it is undisputed that prosecutrix had went mentally unsound and she had not informed about the incident to her guardians only for the reason that she was afraid of the threat given by the appellant. Hence, it cannot be said that the delay in lodging FIR is without of explanation. Apart from that it is such kind of offence in which the person aggrieved come out only after gathering courage to inform person concerned about their plight. Hence, for this reason I do not find any error in the decision of trial Court in holding that the delay in lodging FIR has been satisfactorily explained.

14. Although the prosecutrix was examined after 3 months from the date of incident but the doctor has clearly stated that the prosecutrix was subjected to sexual intercourse once and the prosecutrix has named the appellant as the person who has committed the offence of rape with her. Though it has come in the statement of uncle of prosecutrix

Santosh Pandey PW-3 that when she was mentally unsound, she used to name 3 to 4 persons saying that she loves them. Being in love is another thing, this will not absolve the appellant from the offence of rape committed by him upon the prosecutrix, because the prosecutrix had made categorical statement that it was the appellant who had raped her.

15. After overall consideration, I am of this opinion that trial Court has not committed any error in coming to this conclusion that it was appellant who has committed the offence of rape with the prosecutrix. Hence, I do not find any reason to interfere with findings of conviction against the appellant.

16. As regards the sentence, it appears that the appellant is in jail continuously from the date of his arrest, he does not have any criminal antecedent, he himself was a young boy of 21 years at the time of incident, therefore, I feel inclined to reduce the sentence imposed upon the appellant to minimum one prescribed under Section 376 of the IPC.

17. Hence, the appeal is allowed in part. While maintaining the conviction of appellant under Section 376 of IPC, sentence of RI for 10 years is reduced to minimum sentence of 7 years RI prescribed under Section 376 of IPC, along with fine of Rs.1000/-, in default to undergo RI for two months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

