

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1159 of 2007

Bholaram S/o Ram Prasad Walmiki, aged about 38 years,
Occupation- Sweeper, Municipality Kanker, R/o Tikrapara, Kanker,
District Kanker, CG

---- Appellant

Versus

State of Chhattisgarh through PS - Charama, District Kanker, C.G.

---- Respondent

For the Appellant	:	Ms. Sunita Jain, Advocate
For the Respondent/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

24/03/2018

Since the counsel engaged by the Legal Aid Department is not present in spite of the matter being called on two occasions, this Court took the assistance of Ms. Sunita Jain, advocate present in the court for final disposal of the appeal. The High Court Legal Aid department should ensure providing necessary authority to Ms. Sunita Jain, advocate for representing the appellant in this appeal.

2. Present is a jail appeal. The appellant stands convicted for the offence punishable under Sections 376 & 323 of IPC and sentenced to undergo RI for ten years with fine of Rs.1,000/-, in default of payment of fine to further undergo RI for four months u/s 376 IPC and RI for one year u/s 323 of IPC vide order dated 15.11.2007 passed by the Sessions Judge, Kanker, District North Bastar, Kanker (CG) in Session Trial No. 16/2007.

3. Counsel for the appellant submits that the entire case of the prosecution is a false case. The appellant being father of the prosecutrix could not have been committed the said offence. He has been falsely

implicated on account of some family dispute. She submits that there is no substantial evidence brought on record to establish the case of the prosecution as no independent witness could be brought to adduce evidence to prove the case of the prosecution.

4. Per contra, state counsel referring to the documents along with the appeal submits that the prosecution in fact has led sufficient evidence to prove its case beyond all reasonable doubts. He submits that the prosecutrix was a minor girl aged around 13 years and her statement itself is sufficient to implicate the appellant. He submits that the statement of the prosecutrix stands corroborated from the statement of PW-6 Parvati, mother of the prosecutrix and there is no reason to disbelieve the prosecutrix and her mother. Thus, the case of the prosecution so far as the incident is concerned, stands established from the statement of these two witnesses. As regards the age of the prosecutrix, State counsel refers to the statement of PW-10 Dr. R.C. Thakur who had conducted ossification test and PW-11, S. U. Ali, the headmaster of the Girls Primary School where the prosecutrix had initially undertaken education. PW-11 had produced school admission register Ex. P-20 wherein the date of birth of the prosecutrix has been mentioned as 23.04.1993 i.e. at the time of incident, the prosecutrix was a minor. Thus, prayed for the rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of the record and also considering the statement of the prosecutrix, a minor girl aged about 13-14 years and statement of her mother, there is no reason to disbelieve the statement of both these witnesses. Moreover, what also hard to believe is that both PW-5 & PW-6, the prosecutrix and her mother have levelled allegation against the appellant who is the father of the prosecutrix and husband of the PW-6. Further what cannot be lost sight is the evidence of PW-8 Dr. K. L. Thakur who had medically examined the

prosecutrix and in her deposition has categorically stated that there were injuries on the private part of the prosecutrix so also on the other parts of her body found which shows the prosecutrix being subjected to sexual intercourse and sustaining injuries in the course.

6. So far as the age of the prosecutrix is concerned, the evidence of PW-10 & PW-11, both being consistent to each other, it has been sufficiently proved by the prosecution by way of ossification test as also by producing evidence from the school register. Thus, it stands established that the prosecutrix on the date of incident was a minor.

7. Given the aforesaid evidence which has come before the trial Court, the finding of guilt against the appellant cannot be said to be in any manner erroneous or perverse nor can it be said to be contrary to the evidence. Under the circumstance, the present appeal being devoid of merit, deserves to be and is accordingly dismissed.

8. State counsel, on perusal of record, submits that the appellant in the instant case has completed the entire jail sentence and has been released from jail on 18.09.2014. Hence, no further step is required to be taken on the appeal being dismissed. This Court renders a word of appreciation to Ms. Sunita Jain for rendering valuable assistance for disposal of this appeal.

Sd/-
(P. Sam Koshy)
JUDGE