

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.427 of 2009**

Dauwa @ Damedas, S/o. Dev Sai Panika, aged about 21 years, R/o. Village Bade Damali, Police Station Darima, District Surguja (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through Police Station Darima, Distt. Surguja (CG)

---- Respondent

 For the appellants :Shri Keshav Dewangan, Advocate
 For the respondent/State: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****14.12.2018.**

1. Shri Shrawan Agrawal, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Keshav Dewangan, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is directed against judgment dated 30.5.2009 passed by Third Additional Sessions Judge (FTC), Surguja at Ambikapur (CG) in Session Trial No.394/2006 wherein the said Court convicted the appellant for commission of offence under Sections 363, 366, 376(1) and 506 Part II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 500/-; RI for seven years and to

pay fine of Rs.500/-, RI for ten years and to pay fine of Rs.1000/- and RI for five years and to pay fine of Rs.800/- respectively with default stipulations.

3. In the present case, prosecutrix is PW-2, who is minor. As per the version of the prosecution, on 15.6.2006 at about 7.00 pm the prosecutrix went to attend the call of nature where the appellant caught hold her and upon her resistance threatened her to kill and thereafter committed rape with her. Further case of the prosecution is that the appellant took her to different villages where also he committed rape with her. Father of the prosecutrix lodged missing report at Police Station and after returning of the prosecutrix the matter was investigated. The appellant was charge sheeted and convicted as mentioned above.

4. Learned counsel for the appellant submits as under;-

(i) It is not established that the prosecutrix is minor and her conduct is not fair.

(ii) The trial Court has not evaluated the conduct of the prosecutrix, therefore the finding of the trial court is not sustainable.

(iii) Medical report is not supporting the version of the prosecution, therefore finding recorded by the trial Court is based on conjectures.

(iv) The trial Court has overlooked the number of omissions and contradictions in the statements of the prosecution

witnesses. Therefore, finding of the trial Court is liable to be reversed.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record.

7. Dr. MK Jain (PW-1) is the Radiologist who examined the prosecutrix on 29.6.2006 at District Hospital, Ambikapur. He made detailed report and deposed before the trial Court that after full examination of the prosecutrix he is of the opinion that the prosecutrix is aged between 14-16 years. From the evidence of this witness it is established that the prosecutrix was minor on the date of incident. Version of this witness is unshaken during cross-examination and there is no other medical expert opinion contrary to the report of this expert. Therefore, it is established that the prosecutrix was minor on the date of incident.

8. Prosecutrix (PW-2) deposed that on the date of incident at about 8.00 pm, she came out of the house to ease herself and at that time the appellant tried to pull her and when she resisted, he threatened her to kill and thereafter he took her near a tree and undressed her and also undressed himself and inserted his penis into her vagina. She further deposed that the appellant took her

to various places and there also he committed rape with her. Version of the prosecutrix is supported by the version of Teejaram (PW-3) who is the father of the prosecutrix. As per the version of this witness when the prosecutrix did not return home he lodged missing report and on the basis of missing report the police party searched for the prosecutrix. Dr. BL Kosal (PW-5) deposed that he examined the appellant and found him capable to commit intercourse.

9. Looking to the entire evidence it is established that the appellant took the minor prosecutrix out of keeping of lawful guardian ship without consent of her guardian and he kidnapped her with intent that she may be compelled to illicit intercourse. Again it is established that the appellant raped the prosecutrix and threatened her to kill.

10. Date of incident is 15.6.2006 and report was lodged after returning of the prosecutrix at Police Station Darima that is why FIR shows some delay in lodging the report. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving

other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

11. statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

12. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses.

13. The trial Court has evaluated the evidence elaborately and recorded a finding of conviction. This court has no reason to substitute a contrary finding. The act of the appellant falls within the mischief of various sections of IPC for which the trial Court convicted him and the same is hereby affirmed. The trial Court awarded sentence of ten years for rape with minor girl which

cannot be termed as harsh, disproportionate or unreasonable therefore, sentence part is not liable to be interfered with.

14. Accordingly, the appeals being devoid of merits are liable to be and are hereby dismissed. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**