

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****ACQA No. 186 of 2010**

State of Chhattisgarh through District Magistrate, Rajnandgaon (CG).

**---- Appellant.****Versus**

- Sevak Ram @ Gram s/o. Durjan Ram Marar, aged about 35 years, occupation agriculturist, r/o. Amlidih, PS Chhuikhadan, District Rajnandgaon (CG).

**---- Respondent**


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For Appellant/State      Mr. Arvind Dubey, Panel Lawyer

For respondent          Mr. Abhishek Sharma, Advocate.

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**Hon'ble Shri Prashant Kumar Mishra,**  
**Hon'ble Shri Ram Prasanna Sharma, JJ**

**Oral Judgment****Per Ram Prasaanna Sharma, J****23-01-2018**

1. Challenge in this acquittal appeal is to the judgment dated 6-10-1996 passed by the Additional Sessions Judge, Khairagarh (for short 'the trial Court') Session Division Rajnandgaon, (CG) in Session Trial No.38 of 2006 wherein the trial Court acquitted the respondent from the charges under Sections 376(1) and 506 Part II of the Indian Penal Code for commission of rape on prosecutrix and for criminal intimidation to kill her.
2. As per case of prosecution, prosecutrix is a resident of Amlidih and used to perform cultivation work. On the date of incident at about 3.00 pm she had gone to fetch water from the Well near the house of

the accused. Daughter of the accused called her in her house and was sitting there for about ten minutes and thereafter daughter of respondent left the place by saying that she is going to bring coriander leaves from her garden. Prosecutrix was sitting alone in the house and at the same time respondent dragged her into the room and when she tried to cry he pressed her mouth by his hand and thereafter committed forceful intercourse with her against her will and without her consent. After commission of rape he threatened the prosecutrix that if she would disclose the incident to anyone he will kill her. Due to threat she did not disclose the incident to anyone. When she carried pregnancy of six months, a meeting was organized in the village on 16-3-2006 where she informed about the incident. On report of prosecutrix, first information report Ex.P/1 was recorded. After registration of first information report, prosecutrix and accused were sent for medical examination. Certain documents regarding date of birth of the prosecutrix were seized. After completion of investigation, charge sheet was filed against the respondent. The respondent pleaded innocence and thereafter the trial was conducted. After examination of the witnesses, statement of the respondent was recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the State submits as under:

- (i) As per school register Ex.P/1 and as per report of Radiologist (Ex P/16), it is established that the age of

prosecutrix is below 16 years, but the trial Court ignored the evidence and came to conclusion that prosecutrix may be major.

(ii) The trial Court gave weightage to minor omissions and contradictions in the statement of the prosecutrix and the finding arrived at by the trial Court upon evidence is based on mechanical approach.

(iii) Case of the prosecution is established as per direct and medical evidence but the trial Court committed an error in deciding the facts on legal aspect of the matter.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking the jurisdiction of the appeal.

5. We have heard learned counsel for the parties and perused the record.

6. Prosecutrix deposed before the trial Court that her age is 16 years. Lakhan Sirmour (PW/1) is the Head Master of the primary school Amlidih who produced school register (Ex.P/1) but in that register there was over-writing in the name of the father of the prosecutrix. He further deposed that he has not made any entry in this register therefore, date of birth of the prosecutrix could not be ascertained on the basis of school register.

7. Dr. Leela Ramteke ( PW/5) who conducted medical examination of

the prosecutrix opined that age of the prosecutrix is between 15 to 17 years. As per settled law variation of two years will be counted on either side in age determined by the Radiologist. In this way, age of the prosecutrix came out to be between 15 to 19 years. From the evidence the trial Court was not in a position to firmly determine that the prosecutrix was minor at the time of incident. In other words, it is not proved that prosecutrix was minor and on contrary it can be inferred that she was a major.

8. As per first information report (Ex.P/5), date of incident is somewhere in the Hindi month of "Kuar" that normally falls in English month of September 2005 and first information report was lodged on 17-3-2006 i.e., after 6 months of the incident. As per version of prosecutrix she did not narrate the incident to anyone because respondent has threatened her, but when she was carrying pregnancy of six months a meeting was organized in the village where she narrated for the first time regarding the incident that respondent committed rape on her. As per version of this witness, if that meeting would not have been organized she would not have reported the matter. It means, she has not willingly reported the matter but the same is reported unwillingly. The report is made in unusual circumstances. If unusual circumstances are satisfactorily explained in lodging the first information report, the delay would not be fatal to the prosecution in every case. Once the explanation is offered, the court has to see whether it is satisfactory or not. In the present case, name of the culprit is known to the prosecutrix from the date of incident, but she has chosen not to state anywhere. Again she is not offering any

explanation but she is saying that if meeting would not have been organized after six months, she would not have reported the matter and that shows a consensual act of both parties.

9. Having regard to the conduct of the prosecutrix in not making any kind of complaint about the alleged incident to anyone for six months and after six months she was not willing to narrate the incident to anyone, it is very unsafe to pin faith of her mere words.
10. Considering all the facts and circumstances of the case, we are of the view that prosecution is not able to satisfactorily establish its theory of offence and the finding of the trial Court is not liable to be interfered while invoking jurisdiction of the appeal.
11. In the result, the appeal fails and same is hereby dismissed.

Sd/-

**Judge**

(Prashant Kumar Mishra)

Sd/-

**Judge**

(Ram Prasanna Sharma)