

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 665 of 2009**

Santosh Khairbar S/o Pehtu Khairbar, aged about 25 years, R/o Village Harratoli, Police Station Shankargarh District Surguja (CG)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Shankargarh, District Surguja (C.G.)

---- Respondent

And**CRA No. 814 of 2010**

Pudgu alias Panna Lal S/o Late Siv Bhajan Caste Kanwar, aged about 23 years, Resident of village Harganva, Police Station Shankargarh, District Surguja (CG)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Shankargarh, Police District Balrampur, District Surguja (C.G.)

For Appellants : Mr. Manoj Mishra, Advocate.

For State/respondent : Mr. Vinod Tekam, Panel Lawyer.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD**

11/12/2018

1. Shri Rahul Mishra, Shri A.K. Yadav and Shri Vikash Pandey, Advocates have been engaged by the appellants, but despite repeated calls, none appeared, therefore, Shri Manoj Mishra, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellants.
2. Both the appeals arise out of judgment dated 22.7.2009 rendered by the 3rd Additional Sessions Judge(FTC), Surguja at Ambikapur(C.G.) in Session Trial No. 10/2008, wherein the said court convicted appellant Santosh Khairbar for

commission of offence under Sections 363, 366(A), 376(1) of IPC and sentenced to undergo R.I. for 7 years and fine of Rs. 500/-, R.I. for 7 years and fine of Rs.500/- and R.I. for 10 years and fine of Rs.1000/- with default stipulations and appellant Pudgu alias Panna Lal has been convicted under Section 368 IPC and sentenced to undergo R.I. for 7 years and Rs.500/- with default stipulation.

3. In the present case, prosecutrix is PW-3 and she is minor. As per the case of prosecution, on 23.7.2007, at about 4.00 am when the prosecutrix woke up and went outside from home for easing herself, she was kidnapped/abducted by the appellant Santosh Khairbar who took her to nearly forest and committed rape with her. Thereafter, on 24.7.2007, she was confined in the house of Pudgu alias Panna Lal, where she was again raped by the appellant Santosh Khairbar. The matter was reported and investigated and after completion of trial, the trial court convicted and sentenced and appellants as mentioned above.

4. Learned counsel for the appellants submits as under:-

(i) The trial court has not considered the statement of the prosecutrix that when she attained the age of 10 years then she started her education from class 1, therefore, she is aged about 16 years.

(ii) As the prosecutrix, stayed with the appellants till 25.7.2007 which goes to show that there was consent between the prosecutrix and the appellant.

- (iii) The trial Court has not considered the statement of Investigating Officer, LR Paikara (PW5), who deposed that he has not seized the marks sheet, Patwari Register or any other document regarding age of the prosecutrix, neither conducted test of radiology and ossification test.
 - (iv) As per version of Dr. Shashikala Toppo it appears that instead of 17 years, the age of 13 years has been endorsed therefore, prosecutrix is not minor.
 - (v) Name of Pudgu alias Panna Lal is not mentioned in the FIR and it is not established that he has participated in the crime in question.
 - (vi) Case of the prosecution is full of contradictions and omissions, therefore, conviction and sentence passed by the trial Court is liable to be set aside.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court invoking jurisdiction of the appeal.
 6. I have heard learned counsel for the parties and perused the record of the trial Court.
 7. Somaru (PW1) is father of the prosecutrix. As per version of this witness age of the prosecutrix is 13 years. Fulmen (PW6) is mother of the prosecutrix and as per version of this witness, age of the prosecutrix is 15 years. Dr. Shashikala Toppo (PW4) who examined the prosecutrix deposed that as per

clinical examination age of the prosecutrix is between 12-17 years. All the witnesses have been subjected to searching cross-examination, but remained unshaken. Looking to the evidence of mother and father and medical evidence, it is established that the prosecutrix was below 18 years on the date of incident and she was minor. Finding of the trial Court on this count is not liable to be interfered with looking to the evidence.

8. Prosecutrix (PW3) deposed that she woke up at about 4.00 am, in the morning on the date of incident and went out from the house to ease herself and at the same time, appellant Santosh Khairbar came there, pressed her mouth and dragged her towards forest and committed rape on her. She further deposed that the appellant Santosh Khairbar taken her to the house of appellant Pudgu alias Panna Lal, where Santosh Khairbar again committed rape on her. As per version of this witness, it is known to Pudgu alias Panna Lal that the appellant Santosh Khairbar has no relation with the prosecutrix even then he allowed them to stay in his house. It also appears that it is known to appellant Pudgu alias Panna Lal that the prosecutrix is minor and she was kidnapped by appellant Santosh Khairbar. Version of this witness is supported by the version of Somaru (PW1) and Fulmen (PW2) who are father and mother of the prosecutrix.
9. 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.

10. It is true that there is delay of four days in lodging the report at Police Station. 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 delay in lodging FIR.
11. After assessing the evidence, this Court has no reason to say that the appellants have been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other

witnesses. The trial Court recorded finding of conviction and this Court has no reason to substitute a contrary finding. Offence committed by appellant Santosh Khairbar is punishable under Sections 363, 366(A) and 376(1) IPC, and offence committed by appellant Pudgu alias Panna Lal is punishable under Section 368 IPC for which the trial Court has convicted and the same is hereby affirmed.

12. Heard on the point of sentence:

The trial court awarded minimum sentence for offence under Section 376(1) of IPC and less than minimum cannot be awarded. The trial Court has awarded sentence of R.I. for 7 years to appellant Pudgu alias Panna Lal, which cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeals are liable to be and are hereby dismissed.

13. It is reported by the jail authorities that the appellants have suffered full term of their jail sentence and have been released after getting remission, therefore, no order for their arrest etc. is required.

Sd/
(Ram Prasanna Sharma)
Judge