

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 281 of 2010

State of Chhattisgarh through Police Station Arjunda District Durg
(C.G.)

--- APPELLANT

Versus

Parmendra @ Mannu, Aged about 26 years, S/o. Radhelal, R/o.
Parastarai, P.S. Arjunda, District Durg (C.G.).

---- RESPONDENT

For the Appellant	:-	Mr. Bhaskar Payashi, Panel Lawyer
For the Respondent	:-	Mr. N.S. Dhurandhar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Ram Prasanna Sharma, J.

27. 02. 2018

1. This acquittal appeal is directed against the judgment dated 03.05.2006 passed by the Second Additional Sessions Judge, Session Division Durg, in Session Trial No. 208/2005, wherein the said Court has acquitted the respondent for commission of attempt to commit rape under Sections 376 read with Section 511 of the IPC 1860.
2. As per the prosecution case, on 16.07.2005 the prosecutrix informed her mother that there is some wound on her private part and her mother found some swelling on the private part of the prosecutrix. The prosecutrix informed the incident to her

mother on 16.07.2005 and the report was lodged at Police Station Arjunda by mother of the prosecutrix on 21.07.2005, wherein it is stated that on 14-07-2005 the respondent by catching her hands took the prosecutrix to his house and made her lie down on the ground and thereafter removed her undergarments and tried to commit sexual intercourse with her. After completion of investigation, charge sheet was filed against the respondent. Respondent pleaded innocence, therefore, the trial was conducted. After examination of all the witnesses, statement of the respondent was recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the State submits as under;-

- (i) That the age of the prosecutrix is 5 years and as per definition of rape the question of consent does not arise in the present case.
- (ii) That on the basis of witnesses adduced by the prosecution it is established that the respondent tried to commit sexual intercourse with the prosecutrix but the trial court disbelieved them without assigning any cogent reason.
- (iii) That the finding arrived at by the trial Court is an error of fact as well as error of law and same is liable to be set aside.

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 or modified while invoking

jurisdiction of the appeal.

5. We have heard learned counsel for both the parties and perused the record of the trial Court.
6. Prosecutrix (PW-7) though deposed in her examination-in-chief that when she was playing, the respondent caught hold her hands and took her to his house and made her lie down on the ground and thereafter removed her undergarments. But in cross-examination she contradicted her version. As per her cross-examination she deposed on the basis of tutoring by her mother. In this way, this witness has rebutted her version as stated in examination-in-chief.
7. Kumari Bai (PW-1) is the mother of the prosecutrix (PW-7) as per her version she has stated whatever is informed by her daughter. Dev Kumar (PW-8) is the father of the prosecutrix and he has deposed what is stated to him by his wife. Dwarika Prasad Deshmukh (PW-10) deposed on the same line by stating that the incident was informed by Kumari Bai (PW-1). Debulal Gajendra (PW-11) has also deposed on the same line and stated on the basis of what was informed to him by Kumari Bai (PW-1). Rest of the witnesses have assisted during investigation after registration of FIR. Dr. Subrat Nandi (PW-9) examined respondent.
8. Kumari Bai (PW-1), Dev Kumar (PW-8), Dwarika Prasad (PW-10) and Debulal (PW-11) are the hearsay witnesses. Now, the point for consideration is whether hearsay evidence is admissible evidence and whether the findings can be recorded

on the basis of hearsay evidence. In matter of **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri** reported in (2011) 2 SCC 532, Hon'ble the Supreme Court has held as under;-

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying” I do not know, but so and so told me”.

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying “someone told me that.....”. It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.

As hearsay evidence of these witnesses is inadmissible, the same is not to be used against the respondent.

9. From the version of the prosecutrix nothing has happened with her. She deposed that she has stated on the basis of whatever tutored by her mother. True, it is that the age of the prosecutrix is 5 years but commission of attempt to rape has to be established by the prosecution but no foundational fact has been established by the prosecution, therefore, version of the

defence witnesses that it is a case of false implication not liable to be brushed aside and possibility of false implication cannot be ruled out.

10. On overall assessment of evidence, we are of the view that the finding arrived at by the trial Court is not perverse. It can not be said that the trial Court has considered irrelevant and extraneous material and it would not be just and proper for us to reverse the finding of acquittal.
11. For the foregoing, the acquittal appeal fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma