

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 554 of 2010**

Mehtaru Ram S/o Rambagas Sahu, aged about 55 years, R/o
Jewri PS Bemetara, District Durg (CG)

---- Appellant**Versus**

State of Chhattisgarh Through District Magistrate, District
Durg (CG)

---- Respondent

For Appellant : Shri Tarun Dansena, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****12/12/2018**

1. Shri Mahendra Dubey and Shri Sanjeev Sahu, Advocates have been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Tarun Dansena, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred against the judgment dated 14/7/2010, passed in S.T.No.6/2010 by the Additional Sessions Judge, Bemetara, District Durg(CG) for commission of the offence under Sections 376 (1) and 450 of the I.P.C. and sentenced to undergo R.I. for 10 years and fine of Rs.500/-, R.I. for 5 years and fine of Rs.300/- with default stipulation.

3. In the present case, prosecutrix is PW-1. As per the case of prosecution, the prosecutrix and the appellant are resident of the same village namely- Jewri. The prosecutrix is aged about 11 years. On the date of incident i.e. 26.10.2009, parents of the prosecutrix went to work in the field and prosecutrix was all alone in the house, at the same time, the appellant came in the house at about 9.00 am and thereafter, performed sexual intercourse with her. After returning, she informed the incident to her parents and thereafter the matter was reported and investigated and appellant was charge sheeted. After completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

4. Learned counsel for the appellant submits that evidence of the prosecutrix is not trustworthy and reliable and suffers from material contradiction and omissions and the evidence is not substantiated by the evidence of medical expert, but the trial Court has not gone into this aspect of the case, therefore, finding arrived at 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. As per version of the prosecutrix she was all alone in the house in the morning on the date of incident, where the appellant entered into her house and committed sexual intercourse with her. Version of this witness is supported by the version of Tiharu (PW1),

Kanti Bai (PW3), Ram Khilawan (PW4) and Jamuna Bai (PW5) to whom she narrated the incident. Again it is supported by the version of Dr. M. Devdhar who examined the appellant and found him capable of doing intercourse. Again it is supported by the version of Dr. Rajshri Devdhar (PW12) who examined the prosecutrix and prepared slide from vaginal swab of the prosecutrix. In the present case underwear of the prosecutrix was seized and slide and underwear was sent for examination to F.S.L. in which spermatozoa was found present. Looking to the entire evidence, it is established that intercourse was committed against the prosecutrix. Dr. Badrinarayan Dewangan (PW8) who is Radiologist deposed that he examined the prosecutrix radiologically and after giving details of examination he found that age of the prosecutrix is 11-12 years. As the prosecutrix was minor, she was not competent to give consent and thereafter, the trial Court opined that it is a case of rape.

7. 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 and when her evidence is inspiring confidence, no corroboration is necessary.

8. It is true that the incident had occurred on 26.10.2009 and report was lodged on 28.10.2009 i.e. after 2 days of the incident. 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.

9. 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. The trial Court has considered all the material aspect elaborately and opined that offence under Sections 450 and 376 (1) IPC is established against the appellant and this Court has no reason to substitute a contrary finding and the same is hereby affirmed.

10. Heard on the point of sentence:

The trial Court has awarded sentence of R.I. for 10 years, 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 appeal is liable to be and is hereby dismissed.

11. It is reported that the appellant has suffered full term of his jail sentence and has been released, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)

JUDGE