

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURACQA No. 280 of 2010

- State of C.G.

---- Appellant.

Versus

- Amit Agrawal s/o. Ratanlal Agrawal, aged about 29 years, r/o. Chichola, out post Chichola, PS Chhuriya, Dist. Rajnandgaon (CG).

---- Respondent

For Appellant/State	Mr. Bhaskar Payasi, Panel Lawyer
For respondent	Mr. Malay Kumar Bhaduri, Advocate.

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

Oral Judgment**Per Ram Prasanna Sharma, J****21-2-2018**

1. Challenge in this acquittal appeal is to the judgment dated 24-12-2005 passed by the Sessions Judge, Session Division Rajnandgaon, (CG) in Session Trial No. 48 of 2005 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 was running a hotel at village Paatekohara which is situated close to one barrier. On 6-3-2005 at about 00.30 wee hours one small stone fell near her leg from back side. Prosecutrix went towards the back side of the hotel to see as to

who had thrown the said small stone and at the same time the respondent was standing there who dragged her and closed her mouth by his hand and committed sexual intercourse with her in the field without her will and against her consent and thereafter he fled away from the spot. The matter was informed to her parents on the next day and thereafter it was reported at Out Post Chichola. 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) the prosecutrix was a minor at the time of incident and her minority is established by oral and documentary evidence adduced by the prosecution but the same has been overlooked by the trial Court.
- (ii) the evidence of prosecutrix was reliable but the trial Court in a very casual manner brushed aside her evidence and the evidence of other prosecution witnesses.
- (iii) the trial Court gave undue weightage to minor contradictions in the evidence of prosecution witnesses contrary to law and came to wrong conclusion.

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. The first point for consideration is whether the prosecutrix was below 16 years of age on the date of incident i.e., 6-3-2005 because the law prevailing at the time of incident commands that intercourse by a man with a woman under 16 years of age without her consent and against her will is rape and punishable. Birth register was not produced before the trial Court to establish her actual date of birth. One certificate produced by the Investigating Officer which is marked as Ex.D/2 is alleged to have been issued on the basis of register maintained by the Kotwar but no such register was seized to prove the real date of birth of the prosecutrix. One marks-sheet was seized during investigation in which date of birth of the prosecutrix was mentioned as 1-7-1990, but PW/6 Keshav Lal Gandharw who is Head Master of the said school deposed that date of birth is not recorded on the basis of any register maintained by Kotwar or any birth register, therefore, as per his evidence the said date of birth is recorded on imagination of parents of the prosecutrix. As per version of B.L. Mahobe (PW/10), Mannulal Yadav is father of the prosecutrix and he has two wives. Mother of the prosecutrix has not been examined. Mannu Lal Yadav (PW/3) who is father of the prosecutrix

did not say about date of birth of his daughter. In this way, there was no reliable documentary evidence regarding date of birth of the prosecutrix and oral evidence was also not sufficient to establish the same.

7. PW/2 Dr. Smt. Sushma Kurre who tried to ascertain the age of the prosecutrix, deposed on the basis of her x-ray that her age is between 14 to 16 years. She has admitted that there is variation of 2 – 3 years in age calculated on the basis of Radiological examination. In this way, age of the prosecutrix comes out to 18 – 19 years and she was not minor on the date of incident.
8. The second point for consideration is whether the respondent committed sexual intercourse with prosecutrix against her will and without her consent. As per version of prosecutrix (PW/1), she was working in a hotel in the wee hours on the date of incident and at the same time someone threw one small stone from back side of the hotel on which she went backside of the hotel to see as to who is the person throwing the stone and at the same time respondent dragged her and committed sexual intercourse with her. She deposed in para 2 of her examination-in-chief that she narrated the story to her parents on the next day morning at 9.00 a.m., ,but contradicted her version in para 15 that her uncle Gannu informed her parents regarding the incident and he informed the parents of the prosecutrix that prosecutrix was not found in the hotel during the night. She further deposed that she did not narrate her parents about the incident and informed that no incident was happened to her. She has

admitted in para 10 of her cross examination that she went towards the back side of the hotel silently and made no cry during the said period. She has admitted in para 19 of her cross examination that when respondent committed sexual intercourse, she did not cry. She further deposed that she stated before the police as directed by her father. She further admitted that she has made no report but her father has made report and that report was not read over before her. She further deposed that before entering into the Court, she went to one counsel with her father and counsel suggested them how to state and what to state in the Court. She had gone upto extent in stating before the court that no incident was happened to her (para 16 of her cross examination). Looking to her entire evidence, the trial Court opined that it is a case of consensual relation.

9. If sexual intercourse is committed in secrecy and in such case, evidence of prosecutrix is of paramount importance. If truthfulness is found on the version of prosecutrix and there exists no circumstances which caused shadow of doubt then it can be acted upon. It is the quality of evidence which is to be weighed and that must be of sterling quality on whose sole testimony conviction can be based.
10. Looking to the entire evidence of prosecutrix, we are of the view that her evidence is contradictory on material points which is not sufficient to hold that it is a case of intercourse against her consent or against her will. Commission of intercourse with a major girl with consent is not an offence.

11. So far as offence of threatening to kill is concerned, there is no such evidence of determination of respondent to execute any word uttered by him and even words are not clearly established. For commission of offence under Section 506(B) of the IPC, only uttering some words is not sufficient which had only sound and fury but it must convey well formed determination to carry threat into execution.
12. Considering all the facts and circumstances of the case, we are of the view that prosecution has not been 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.
13. In the result, the appeal fails and same is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)