

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1008 of 2014

Mayaram Paikara S/o Chhatrapati Paikara Aged About 70
Years R/o Village Pongaro Barjoriyapara, P.S. Kansabel, Civil
& Rev. Distt.-Jashpur, Chhattisgarh --- **Appellant**

Versus

State of Chhattisgarh S/o through P.S. Kansabel, Civil & Rev.
Distt.-Jashpur, Chhattisgarh --- **Respondent**

For the appellant	:	Mr. Udhoram Koshaley, Advocate.
For the Respondent	:	Mr. Sangharsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

05.05.2018

1. This appeal is against the judgment of conviction and order of sentence dated 13.08.2014 passed by the Addl. Sessions Judge (FTC), Jashpur in Sessions Trial No. 28/2014 whereby the appellant stands convicted u/s 376(2) of IPC and section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo R.I., for 10 years and R.I., for 10 years respectively and to pay a fine of Rs.1000/- on each count and in default of payment of fine, he was further directed to undergo R.I., for one month.
2. The brief facts of the case are that on 11.01.2014 at about 9 a.m., the prosecutrix had gone to river to take bath and after taking bath, she returned home late about 1.00 a.m.

On being enquired by the mother about her late arrival, the prosecutrix told that the accused Mayaram dragged her from river and forcibly took away her to the adjacent forest where he removed the garments of the prosecutrix and committed rape on her. The prosecutrix has also complained about the pain on her back and legs. Subsequently it was found that she was bleeding from her private part and thereafter, when her father came a report was made. It is further the case of prosecution that the prosecutrix is mentally retarded. The report was immediately made vide Ex.P-3. Thereafter the prosecutrix was subjected to medical check up and the appellant was also subjected to medical check up. On such examination it was found that the appellant was able to perform sexual intercourse and in respect of the prosecutrix the medical report affirmed the fact that she was subjected to sexual intercourse. Consequently after collecting the evidence on record, the charge sheet was filed u/s 376(2) of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

3. During the course of trial, the appellant abjured his guilt and claimed to be tried. The prosecution primarily relied on the statements of witnesses of Dr. R.Toppo (P.W.1), the mother of victim (P.W.2) namely Navina Chauhan, father Shambu Singh (P.W.3), the Investigating Officer Anita Prabha Minj (P.W.5), Dr. Sarita Singh, the radiologist (P.W.8) and the victim (P.W.9).
4. The trial Court after evaluating the evidence has convicted and sentenced the accused u/s 376(2) of IPC as aforementioned. Hence this appeal.

5. Learned counsel for the appellant would submit that the incident is stated to have taken place at about 9 a.m. in the broad day light and the act like nature of dragging a girl at about 9 a.m., in the morning is not possible and the allegations are false. He further submits that the prosecution was not able to prove the fact that she was subjected to sexual intercourse, therefore, the conviction may be set aside.
6. Per contra, learned State Counsel opposes the arguments of appellants and submits that the judgment of the trial Court is well merited which do not call for any interference by this Court.
7. The mother of prosecutrix in this case is examined as P.W.2. The mother in her statement on a question made by the Court has stated that her daughter is mentally retarded and is not in active statement of mind. The statement of P.W.9 the victim would show that on certain questions, she remained silent and she answered certain questions. The court while examining the victim observed that the witnesses was able to respond to few of the questions and was unable to respond to few of the questions, therefore, she was allowed to be examined in presence of her mother. In her deposition, the victim has stated that she was taken by the appellant to the forest while she was taking bath in a river, deposing further, she has stated that initially the appellant took out the dress and undergarments i.e., pant of the victim, thereafter she was made to lie on the ground. Subsequently the accused caught hold of her hands and thereafter tied it. Subsequently the legs were also tied. On

a query being made that what was done after taking out the undergarment, the victim by gesture has stated that sexual assault was committed towards her in her private parts.

8. The overall evaluating the statements of victim by way of the questions and answers show that she was mentally retarded as is affirmed by the mother (P.W.2). The sexual assault committed by the appellant remains unrebutted. The mother Navina Chauhan (P.W.2) and the father Shambhu Singh (P.W.3) have also disclosed the similar incident that while the victim was taking her bath the appellant took her to forest and thereafter committed sexual assault. The sexual assault has been narrated by the victim (P.W.9). Dr. (Smt.) R.Toppo (P.W.1) has stated that she examined the victim and found that she may have suffered the intercourse. The doctor further found that the victim was mentally retarded. This witness has stated that a report was sought from her about the rape and on a query being made, the doctor has stated that there was presence of blood on the private part of the victim and the bleeding is clear indication of rape. To prove the age, Dr. Sarita Singh (P.W.8) who is a radiologist has given a report Ex.P-14. According to her, the radiological age of the victim was less than 15 years.
9. Therefore, on evaluating the entire statements of the witnesses, I am of the opinion that the prosecution was able to prove the fact the victim was subjected to rape and was minor and mentally retarded. Further the appellant who is aged about 70 years was also examined by Dr. Sushil Xess (P.W.6). He gave report vide Ex.P-11-A. He found that the appellant was capable of committing sexual intercourse and

therefore, considering the evidence as a whole, I am of the opinion that the prosecution has been able to prove the case beyond reasonable doubt and has proved the fact that the appellant has committed sexual intercourse with the minor girl who was mentally retarded.

10. In the result, the judgment of conviction and sentence passed by the court below is well merited and do not call for any interference. Accordingly, the appeal has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**