

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 308 of 2013

- Suklal S/o Chait Ram Sarathi, Aged About 35 Years, R/o Podi Uproda, P.S. Bango, District Korba C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Bango, District Korba C.G., Chhattisgarh

-----Respondent

For Appellant	: Shri Arun Kumar Shukla, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

06/12/2018

1. This appeal has been preferred against judgment dated 28-02-2013 passed in S.T. No.97/2012 by the Additional Sessions Judge, Katghora, Distt. Korba, C.G. convicting the appellant under Section 342 and 376 of the IPC and sentencing him with R.I. for 6 months and R.I. for 10 years along with fine Rs.500/- and Rs.1000/- with default stipulations and direction that both the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this that, the prosecutrix is a minor girl who is mentally retarded as well as she is dumb. The incident is of 27-07-2012 when father of the prosecutrix, Ramdayal (PW-1) came back from work at about 12:00 in the afternoon and witnessed that the prosecutrix was being raped by the appellant. The FIR (Ex.-P/1) was lodged by him in Police Station Bango, on the basis of which the prosecutrix was medically examined, her age

is recorded as 13 years. During the investigation the slides prepared from the vaginal secretion of the prosecutrix and the slides prepared from the sperm of the appellant were sent for FSL examination and according to the FSL report (Ex.-P/15) the presence of human spermatozoa was found on the slides of the prosecutrix as well as slides of the appellant. Statement of the witnesses were recorded under Section 161 of the Cr.P.C. Thereafter, after completion of the investigation charge sheet was filed.

3. The appellant was charged with offence under Section 342 and 376 of the IPC, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence brought against him by the prosecution, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by the counsel for the appellant that no case is made out for conviction against the appellant because the prosecutrix herself was not examined before the Court and her father Ramdayal (PW-1) is interested witness. Secondly, the medical evidence also does not support the prosecution case as the examining doctor has opined that no definite opinion can be given regarding occurrence of sexual intercourse with the prosecutrix. Therefore, the appellant is

entitled for acquittal and it is prayed that the appeal may be allowed.

7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made, submitting that the prosecutrix is mentally retarded as well as dumb, apart from being minor. It is a case of eye-witness, further, in which the father of the prosecutrix has himself witnessed the incident, which needs no corroboration. Further, the FSL report is also sufficient evidence for corroboration if needed at all. Therefore, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Ramdayal (PW-1) has stated before the Court that his daughter is of age 13 years, but she is mentally retarded as well as she is dumb. He has stated that on the date of incident at about 12 in the afternoon when he came back from work and was searching for his mentally retarded daughter, then he saw that this appellant was committing offence of rape with her. He got shied and turned his face, then the appellant made his escape. After informing his wife and Sarpanch of the village, he lodged the FIR (Ex.-P/1) in Police Station Bango. In cross-examination it has not been denied that the age of the prosecutrix was about 13 years and his statement about witnessing the incident has also remained unrebutted.
10. Doctor Smt. S. Bhagat (PW-3) examined the prosecutrix on 27-07-2012 at 05:30 p.m. and observed that the prosecutrix was mentally retarded and she was incoherent about time, place and person. On examining the private parts of the prosecutrix she has found that

hymen had old tear giving entry to two fingers easily. She has opined that the prosecutrix was habitual to sexual intercourse and she could not give any definite opinion about recent intercourse and gave report vide Ex.-P/3. In cross-examination her statement has remained unrebutted.

11. Doctor G.S. Jatra (PW-4) examined the appellant on 28-07-2012 and found him physically fit for sexual intercourse. He prepared two slides from the sperm obtained from his private part which were sealed and handed over the police constable for FSL examination and prepared his report vide Ex.-P/4. In cross-examination there is no denial and no other contradictory statement.
12. Sub-Inspector Ashok Kumar Sharma (PW-5) has stated about conducting investigation of the case, which has remained unrebutted in his cross-examination.
13. After over all consideration and scrutinizing all the evidence present in the record of the trial Court, it is found that the evidence of Ramdayal (PW-1) is reliable and trustworthy who has stood firm in his cross-examination. Although, the doctor has not given any clear opinion, but the finding of old tear in hymen of the prosecutrix suggests that the prosecutrix was being ravished from earlier times and it was the day on which the appellant was caught ravishing her, which is a very sad state of things, looking to the physical and mental condition of the prosecutrix. Apart from that, the presence of spermatozoa on the slides prepared by the examining doctor on the same day of examination of prosecutrix according to the FSL report

Ex.-P/15 is itself suggestive of this fact that recent intercourse has taken place with the prosecutrix, although the doctor could not give any opinion regarding this fact. Therefore, I am of this opinion that the trial Court has not committed any error in coming to this conclusion that the appellant was the person who has committed rape with the prosecutrix on the date of incident. Hence, conviction against him in the impugned judgment cannot be interfered with.

14. It is submitted by learned counsel for the appellant that the appellant is in jail since the day in which he has been arrested and he has been completed almost 6 years and 9 months so far and he belongs to economically weaker section of society and he is being represented by the appointed counsel by the High Court Legal Services Committee, hence, considering all the circumstances, the sentence of imprisonment may be reduced to the sentence of imprisonment already undergone by him in jail.
15. After considering on the entire facts of the case, it is found that minimum sentence provided for the offence under Section 376 of the IPC is 7 years R.I., hence, the sentence cannot be reduced beyond that. Anyhow, I feel inclined to reduce the sentence of imprisonment to some extent, therefore, the appeal is allowed in part. The conviction of the appellant under Section 342 and 376 of the IPC are hereby maintained. However, for the offence under Section 376 of the IPC instead of R.I. for 10 years, the appellant is sentenced with R.I. for 8 years along with fine and default stipulation as has been imposed by the trial Court. Sentence

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imposed upon the appellant for offence under Section 342 of the IPC is maintained as it is.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil