

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRA No. 967 of 2012

- Doulat Ram S/o Milau Ram Satnami Aged About 16 Years R/o Village Kutela Mouharbhata Tahsil - Sarangarh Distt. Raigarh C.G. , Chhattisgarh

---- Appellant.

Versus

- State of Chhattisgarh Through - District Magistrate , Raigarh , Distt. Raigarh C.G. , Chhattisgarh

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.

For Respondent/State : Mr. Suryakant Mishra, PL.

**Judgment on Board
(21-08-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 12-10-2011 passed by Additional Sessions Judge, Sarangarh, District Raigarh (CG) in Sessions Trial No. 30 of 2011 wherein the said Court convicted the accused/appellant for commission of offence under Section 376 of the IPC 1860 and sentenced him to undergo RI for ten years and fine of Rs.10,000/- with default stipulations.
2. As per prosecution case, mother of the prosecutrix lodged first information report stating that they are residents of village Neelupara, Raigarh and on 23-6-2011 at about 2.00 – 3.00 pm prosecutrix who is daughter of the complainant was playing with her son Amar Deep and at the same time, appellant reached

there and took both the children to his home and thereafter he sent Amardeep outside the house and committed rape on her.

3. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court convicted the appellant as mentioned above.

4. Learned counsel for the appellant submits as under:

i) the prosecutrix has appeared before the trial court, but the court did not record her evidence sating that she is not competent witness.

ii) The case of the prosecution is based on the statement of Smt. Seema Bai (PW/5), Amardeep (PW/3), Naakaram (PW/2), Nandram (PW/6) and other corroborative piece of evidence, but the commission of offence is not proved by direct evidence.

iii) Corroborative piece of evidence is not sufficient to bring home the guilt against the present appellant.

5. On the other hand, learned State counsel supporting the impugned judgment submits that the finding of the trial Court is based on proper marshaling of evidence and the same is not liable to be disturbed.

6. I have heard learned counsel for the State, perused the judgment impugned and record of the trial court.

7. Dr. Smt. Kiran Rohleda (PW/1) examined the prosecutrix on 25-6-2011 and recording finding that intercourse is committed with the prosecutrix. PW/12 Dr. M.K. Manhar conducted examination of the appellant and found that he is capable to perform intercourse. PW/13 Jehru Ram Bhagat is constable who assisted during investigation. PW/11 Sub-Inspector R.M. Paraste is the Investigating Officer. PW/10 Constable Jainifer Penna (PW/10) assisted during investigation. PW/9 Khem Raj Patel, is the person who prepared the spot map. PW/8 Revlal Satiya is a person who took the seized articles to FSL, Raipur for chemical examination.
8. PW/5 Smt. Seema Bai deposed that her daughter informed her that the appellant committed intercourse with her. Nandram (PW/6) deposed that he received information about the incident through Smt Seema Bai (PW/5). Amar Deep (PW/3) deposed that Doulat Ram sent him out of the house and prosecutrix was in the house of the appellant and when he again returned to the house of the appellant, prosecutrix was not present there.
9. The trial Court found the prosecutrix to be incompetent witness to depose under Section 118 of the Indian Evidence Act, 1872. The other witnesses namely PW/5 Smt. Seema Bai and PW/6 Nandram Yadav have deposed that on the basis of what others have informed them. As per statement of Seema Bai (p

PW/5), she has been informed about the incident by her daughter/prosecutrix. All the witnesses are hearsay witnesses.

10. Now the point for consideration of this court is whether hearsay evidence is admissible in evidence and can be acted upon.

11. In **Kalyan Kumar Gagoi 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 circumstance, 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”.

12. As the hearsay evidence is inadmissible in evidence, it cannot be acted upon. If hearsay evidence is excluded from the entire evidence, there is nothing on record to connect the appellant with the crime in question. Though the medical evidence supported the factum of intercourse with the prosecutrix but the

expert opinion is not substantive piece of evidence for answering the crime in question. It can be used in support of substantial evidence but independently it cannot be used to link the appellant for commission of offence. It is settled principle of law that “graver the offence, stricter the proof”. It is also settled that long mental distance “may be true and must be true”. Therefore in absence of strict evidence against the present appellant, charge under Section 376 of the IPC is not established. The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.

13. Accordingly, the appeal is allowed. Conviction and sentence imposed upon the appellant by the trial Court is hereby set aside. The appellant is acquitted of the charge under Section 376 of the IPC. The appellant is reported to be in custody. He be released forthwith, if not required in any other case.

Sd/-

(Ram Prasanna Sharma)
JUDGE

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