

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1094 of 2015

1. Ajjuram Deshmukh son of Late Tilakram Deshmukh, aged about 27 years, R/o village Aroud, Police Station Balod, Civil and Revenue District, Balod, CG

---- Appellant

Versus

1. State of Chhattisgarh through the Station House Officer, Police Station Balod, District Balod.

---- Respondent

For Appellant	-	Shri GVK Rao, Advocate.
For Respondent.	-	Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

08.09.2018

This appeal is directed against the judgment and order dated 11.09.2014 passed by Special Sessions Judge, Balod in Special Sessions Trial No. 48/2013 convicting the accused/appellant under Sections 376 (1) and 506-II IPC and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs. 25,000/- u/s 376 (1) and rigorous imprisonment for one year u/s 506-II IPC, plus default stipulations.

2. Facts of the case in brief are that on 04.07.2012, FIR (Ex. P-3) was lodged by the prosecutrix aged about 14 years at the relevant time alleging that on 16.06.2012 at 2 PM when she was standing near the shop of one Shankar Deshmukh, accused/appellant came there, gave her Re. 1/- for getting disposable glass and when she was returning after handing over the said item, he caught hold of her, shut her

mouth, took inside, made her lie on the cot, up-turned her skirt, slid down her underwear and committed forcible sexual intercourse with her even after the resistance being made. It is alleged that as the accused had threatened her of life, she did not report the matter to the police immediately. Based on this FIR, offences under Sections 376, 506-II IPC and 3 (2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) (for convenience "the Special Act") were registered against him. Prosecutrix was medically examined by Dr. Manjulata Ganwre (PW-1) who gave her report Ex. P-1. Evidence of this witness shows that hymen of the prosecutrix was ruptured and old tear was present on it and her age at the relevant time has been opined to be 14-15 years. For exact determination of age, this witness had referred the prosecutrix for radiological examination. The Court below framed the charge against the accused/appellant under Sections 376, 506-II IPC and 3 (2) (v) of the Special Act.

3. So as to hold the accused/appellant guilty, prosecution has examined 09 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the accused/appellant of the charge under the Special Act but has convicted and sentenced him as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that there is an inordinate delay of 18 days in lodging the FIR which has not been

properly explained by the prosecution. He further submits that there is no legally admissible evidence to show that on the date of incident the prosecutrix was minor. According to him, it is apparent from the statement of DW-1 that at the time of incident the prosecutrix was in the school and therefore, there was no occasion for the appellant to molest her.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as described above are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-3) has stated that on the date of incident at about 2 PM when she had gone to the shop of one Shankar Deshmukh, the accused/appellant came there, gave Re. 1/- to her for bringing disposable glass and when she went to him for handing over the said item, he caught hold of her, dragged her inside, removed her and that of his own clothes and committed forcible sexual intercourse with her. He is also stated to have threatened her of life in case she made a disclosure of the incident to anyone and that on account of being in fear she disclosed the incident to her mother after four days and then the report was lodged. In cross-examination, this witness remained firm to what she has stated in the examination-in-chief. Dr. Manjulata Ganwre (PW-1) is the witness who medically examined the prosecutrix and gave her report Ex. P-1 stating that she noticed rupture on hymen

with two old tear marks. Age of the prosecutrix, according to this witness, was in between 14-15 years. For determination of exact age of the prosecutrix, she was referred to the radiologist. Tulsiram Chandel (PW-2) is the Patwari who prepared spot map (Ex.P-2). Revti Bai (PW-4) and Prushottam Bhuarya (PW-5) – the parents of the prosecutrix have duly supported the case of the prosecution stating that on the date of incident their daughter (prosecutrix) had told them about being subjected to forcible sexual intercourse by the accused/appellant on the pretext of getting disposable glass. No discrepancy on material particulars is noticed in their statements. Dr. S.K. Soni (PW-6) is the witness who medically examined the accused/appellant and gave his report Ex. P-9 stating that he was fully capable of performing sexual intercourse. Dr. B.N. Dewangan (PW-7) is the radiologist and according to the opinion given by him, the prosecutrix was aged in between 15 and 16 years of age at the relevant time. He has specifically denied that she was 18 years of age at that time. D.P. Thakur (PW-8) is the investigating officer who has duly supported the case of the prosecution. Hemlal Sahu (PW-9) is the witness who assisted in the investigation. T.R. Komiya (DW-1) – the Principal of the school has stated that on the date of incident presence of the prosecutrix was recorded in the school and that without his permission no student could go outside the school in the school hours.

9. Having heard counsel for the parties and gone through the evidence available on record particularly that of the prosecutrix, it is apparent that on the date of incident the accused/appellant gave Re. 1/- to the prosecutrix to bring disposable glass, dragged her inside his house, removed her and that of his own clothes and committed forcible

sexual intercourse with her. Evidence also shows that after committing the offence, he also threatened her of life in case she disclosed the incident to anyone. Prosecutrix has also stated that only on account of fear the delay has occasioned in lodging the report. Since the prosecutrix was medically examined on 4.7.2012 i.e. about 18 days after the incident, the opinion of the doctor that old tear was found on her hymen, appears to be justified as in the interval of 18 days the injuries must have been healed up. As regards age, the doctor who medically examined her has opined her age at the relevant time in between 14 and 15 years, and the radiologist has opined it to be in between 15 and 16 years, it can safely be said that on the date of incident she was below 18 years of age. Radiologist has even specifically denied that the age of the prosecutrix at the relevant time was 18 years.

10. Thus in view of the evidence of the witnesses, particularly that of the prosecutrix (PW-3), the doctor (PW-1) and the radiologist (PW-7), this Court is of the considered opinion that the trial Court was fully justified in convicting the accused/appellant under Sections 376 (1) and 506-II IPC and sentencing accordingly as described above. No illegality or infirmity in the judgment impugned is noticeable and being so it deserves affirmation by this Court by dismissing the appeal.

11. In the result, the appeal being without any substance is liable to be dismissed and it is dismissed as such. As the appellant is already in jail, no order regarding surrender etc. is needed.

Sd/-

(Pritinker Diwaker)

Judge