

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1092 of 2013**

- Golu Panika S/o Rajkumar Panika Aged About 19 Years R/o Pavra, Amarkantak, Ps Amarkantak, Civil And Rev. Distt. Anuppur M.P., Madhya Pradesh

---- Appellant

Versus

- State Of Chhattisgarh Through Sho, Ps Gourela, Distt. Bilaspur C.G. , Chhattisgarh

---- Respondent

For the Appellant : Mr. Rajnish Shrivastava, Advocate.

For the State/Respondent : Mr. Ashok Swarnkar, Panel Lawyer.

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

26/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 10.10.2012 (09.10.2012 & 10.10.2012, as mentioned in memo of appeal) passed by the Additional Session Judge, Pendra Road, District-Bilaspur, Chhattisgarh, in Session Trial No.10/2012, convicting the accused/appellant under Section 376 of Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for 7 years with fine of Rs.500/- with default stipulation.
2. The prosecution case, in brief, is this that in the night of 6.10.2011 the appellant abducted the prosecutrix, aged about 13 years, took

her to the jungle and there he committed forcible sexual intercourse with her more than once. A missing report of the prosecutrix was lodged by her father Kamlesh Panika (PW-2) on 10.10.2011 in Police Station Gaurela. On the same day, the prosecutrix was recovered from the custody of appellant and she made statement against the appellant based on which FIR (Ex.P-16) was registered against the appellant.

3. On completion of investigation, the charge sheet has been filed before the concerned Court. Charges under Sections 363, 366 & 376 of IPC were framed against the appellant, he denied the same and sought for trial. The prosecution in order to prove its case examined as many as 9 witnesses. Appellant was examined under Section 313 of CrPC in which he denied all the incriminating evidence appearing against him, pleaded innocence and false implication. No witness was examined by appellant in his defence.
4. After hearing the parties and appreciating the evidence on record, the trial Court by the impugned judgment convicted and sentenced the appellant in the manner as mentioned above.
5. It is submitted by counsel for the appellant that conviction of the appellant is based on the evidence of prosecutrix and other witnesses, who are not trustworthy and have been declared hostile by the prosecution, hence, the conviction is bad in law. The medical evidence also does not support the conviction of offence of rape with the prosecutrix, hence, the appellant is entitled to be acquitted. It is

prayed that appeal be allowed.

6. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that prosecution has proved its case beyond doubt. There is no reason to disbelieve the testimonies of the prosecutrix and other witnesses. The judgment impugned passed by the trial Court is strictly in accordance with law and needs no interference by this Court in exercise of appellate jurisdiction. Hence, the appeal be dismissed.
7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt ?
9. Prosecutrix PW-1 is 13 years old. She has stated before the Court that on the date of incident she met with appellant in Dasherra fair, Khodri where the appellant allured her to go with him. He firstly took her to different places and thereafter he took her to a place located in jungle and there he committed offence of rape with her regarding which description has been given by her. On account of some commission compared to her previous statement, the prosecution with the permission of Court asked some leading questions and in the answer to which she had admitted all the suggestions, that

appellant had committed the offence of rape with her. In the cross-examination, she has stuck to her version that it is the appellant who committed committed the offence of rape with her. Nothing could be elicited in the course of cross-examination contradicting whatever that has been stated in her examination-in-chief or suggesting that she is making false statement.

10. Kamlesh Panika PW-2 is the father of the prosecutrix who has lodged the missing report. On search being made by him, he found the prosecutrix in custody of the appellant. Subsequent to which she was produced in the police station.
11. Ramkali Bai PW-3 has stated that she has knowledge that the prosecutrix was with the appellant for about 3 to 4 days. Narbadiya Bai PW-5 has stated that she was informed by the prosecutrix that the appellant has committed sexual intercourse with her. Statement of this witness remained unchallenged in her cross-examination. Santosh Yadav PW-7 is the uncle of prosecutrix who went in search of her with Kamlesh Panika PW-2 and found her in custody of the appellant. Statement of this witness has also remained unrebutted in cross-examination.
12. Statement of the prosecutrix that she was abducted and raped by the appellant has not only remained unrebutted in the cross examination but also gets support from the statement of Narbadiya Bai PW-5, who is though hear-say witness, but her statement could not be impeached by the defence in her cross-examination. Hence, the statement of prosecutrix PW-1 finds some support and as there is no

other admission made by other prosecution witnesses in any manner in support of defence. Nothing could be brought on record by the defence to show that the story put forth by the prosecutrix is doubtful and improbable. For these reasons, the statement of prosecutrix PW-1 is found reliable and trustworthy.

13. So far as the age of the prosecutrix is concerned, Banshilal PW-4, who is the Head Master of Primary School where the prosecutrix was admitted, has issued the certificate of Ex.P-10 certifying that date of birth of prosecutrix is 1.8.1999. This witness had also produced the school admission register in which the date of birth of the prosecutrix is mentioned as 1.8.1999. The existence of said entry in the school admission register remained unrebutted in the cross-examination. The Court itself has assessed the age of prosecutrix PW-1 as about 13 years. The doctor Nidhi Korram (PW-8) while examining the prosecutrix has also made an assessment of her age to be about 13 years. Hence, there being no direct contradictory evidence or other contradictory admission by any of the witnesses, it is clearly established that the age of prosecutrix on the date of incident was below 14 years. Although the medical examination report Ex.PW-14 does not clearly shows that the prosecutrix was subjected to forcible sexual intercourse, but on the basis of findings in the said report, it is apparent that the prosecutrix was habitual to sexual intercourse which is again a factor in support of the prosecution case.

14. Considering the fact that the prosecutrix was below 14 years of age at the time of incident, if she was a consenting party, then still crime

under Section 376 of IPC would constitute against the appellant because any consent given by her is immaterial in view of sixth description to Section 375 of IPC, which was the promission in force on the date of incident.

15. In view of above discussions, this Court is of the considered opinion that the prosecution has been able to prove its case beyond reasonable doubt. Thus, conviction of the appellant under Section 376 of IPC suffers from no illegality and the same is hereby maintained.

16. In the result, the appeal being meritless is liable to be and is hereby dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha