

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 337 of 2015

1. Mannu Ram Sori S/o Jagdev Sori Aged About 21 Years
 2. Manoj Kumar S/o Asha Ram Vishwakarma Aged About 19 Years
- Both R/o Village Dumarpani, P.S. Narharpur, District Kanker, C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through P.S. Narharpur, District Kanker, C.G.

---- Respondent

For Appellant	:	Shri Nasimuddin Ansari, Advocate.
For Respondent/State	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Pritinker Diwaker, J

Judgment On Board

08/09/2018

This appeal arises out of the judgment of conviction and order of sentence dated 9.12.2014 passed by the Special Judge (Atrocities) North Bastar, Kanker (CG) in Special ST No.17/2014, convicting accused/appellant No.1 Mannu under Sections 363, 366, 376(2)(g) & 6 of Protection of Children from Sexual Offences Act and sentencing him to undergo RI for two years, RI for five years, RI for 10 years and RI for 10 years plus fine of Rs.10,000/- with default stipulation respectively. Appellant No.2 Manoj Kumar has been convicted under Sections 363, 366A, 376(2)(g) and 6/17 of POCSO Act and sentenced to undergo RI for two years, RI for five years, RI for 10 years and RI for 10 years plus

fine of Rs.10,000/- with default stipulation respectively.

02. As per prosecution case, on 16.6.2013 in the night while the prosecutrix was returning from some marriage function, she was forcibly taken on motorcycle by three accused persons and subjected to rape. In the morning of 18.6.2013 the prosecutrix was found sleeping in the veranda of PW-2 Ratnu Netam. Based on FIR (Ex.P/33) lodged by PW-12 Jagdish, father of the prosecutrix, on 18.6.2013 offence under Sections 363, 366A, 376, 34 of IPC and 5(L) of POCSO Act was registered against the accused persons. The prosecutrix was medically examined by PW-5 Dr. Smt. Sarita Kumeti vide Ex.P/2 and she noticed abrasion on left lower knee joint, redness with mild inflammation in labia majora and labia minor, hymen ruptured, blood like secretion from vagina and one finger inserted into vagina with tenderness. While framing charges, the trial Judge charged the accused persons under Sections 363/34, 366A/34, 376/34 and 5(L), 6 of POCSO Act read with 34 of IPC. Accused Manoj and Danu @ Daneshwar were also charged under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act read with Section 34 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, they examined one witness.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Danu @ Daneshwar of all the charges, convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits that the appellants have been falsely implicated in this offence. He further submits that there is no legally admissible evidence on record showing the prosecutrix to be minor on the date of incident and the trial Court without proper appreciation of evidence on record has recorded conviction of the appellants by taking into consideration irrelevant things.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction awarded to the appellants is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned. He submits that even assuming the prosecutrix to be major, the question of her consent does not arise because the present is a case of gang rape.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 prosecutrix while supporting the prosecution case has stated that on 16.6.2013 while she was returning after attending a marriage function, the accused persons came to her on a motorcycle and took her to a village school at Dumarpani where appellant

Mannuram committed rape upon her and in the next morning at 4 Mannu again committed rape upon her. In cross-examination she has denied all the adverse suggestions and remained firm while accusing the appellants of commission of the offence.

09. PW-2 Ratnuram is the person in whose veranda the prosecutrix was found sleeping. However, he has turned hostile. PW-3 Kalyan Singh has also turned hostile. PW-4 Ku. America is the girl who was accompanying the prosecutrix at the relevant time. Though she has turned hostile but has supported the prosecution case in respect of the appellants forcibly taking the prosecutrix on motorcycle. PW-5 Dr. Smt. Sarita Kumeti medically examined the prosecutrix on 19.6.2013 vide Ex.P/2 and noticed abrasion on left lower knee joint, redness with mild inflammation in labia majora and labia minor, hymen ruptured, blood like secretion from vagina and one finger inserted into vagina with tenderness. In her opinion, the prosecutrix could have been subjected to sexual intercourse.

10. PW-6 Dharmendra Netam has stated that he saw the prosecutrix with three accused persons who were taking her on their motorcycle and on the third day of the said incident, while the prosecutrix was being searched, she was found sleeping in the veranda of PW-2. Though earlier in respect of seizure Ex.P/12 whereby underwear of accused Mannu was seized, this witness was declared hostile, however, on cross-examination by the prosecution on this point, he supported the prosecution case in this regard as well. PW-7 Ku. Khileshwari, Patwari, prepared the spot map Ex.P/15. PW-8 Kamlesh Kumar, Incharge Head Master, produced documents in relation to age

of the prosecutrix wherein her date of birth is mentioned as 27.5.1998.

11. PW-9 Tarkeshwar Patel, SDOP, did part of investigation. PW-10 PRK Singh Tanwar, investigating officer, has duly supported the prosecution case. PW-11 MS Kange, ASI, assisted in the investigation. PW-12 Jagdish, father of the prosecutrix, lodged FIR (Ex.P/33) and gave consent for medical examination of the prosecutrix vide Ex.P/34. PW-13 Ku. Parveen also states that on the date of incident while she was returning from marriage function with the prosecutrix and Ku. America (PW-4), they were stopped by the accused persons and that the prosecutrix and PW-4 stopped there whereas she left for her house. She states that two days thereafter she was informed by the prosecutrix about the incident of rape with her by the accused persons. PW-14 Dr. Manoj Kumar Sahu medically examined accused/appellant Mannu and found him capable of performing sexual intercourse. PW-15 Smt. Sili Thomas, Tehsildar, conducted test identification parade vide Ex.P/43 where accused/appellant Mannu was duly identified in both rounds of identification parade by the prosecutrix.

DW-1 Manohar Netam has stated that accused/appellant Mannu was throughout assisting him in preparing food in the marriage function. However, in cross-examination he admits that they had completed their work by 5-6 pm on that day.

12. Close scrutiny of the evidence makes it clear that on 16.6.2013 while the prosecutrix along with PW-4 Ku. America and PW-13 Ku. Parveen was returning to her house after attending a marriage function, she was stopped by the accused/appellants, taken on the

motorcycle and then she was subjected to rape by appellant Mannuram. In her evidence the prosecutrix has categorically stated as to the manner in which she was taken by the accused/appellants and then subjected to rape. Her version finds support from the evidence of PW-4 and PW-13 who were accompanying her at the relevant time. Furthermore, medical evidence also corroborates the testimony of the prosecutrix according to which she had suffered abrasion on left lower knee joint, there was redness with mild inflammation in her labia majora and labia minor, her hymen was ruptured, there was blood like secretion from vagina and one finger inserted into vagina with tenderness. The doctor also opined that she could have been subjected to sexual intercourse.

13. As regards age of the prosecutrix, the trial Court considering the statements of PW-12 Jagdish, father of the prosecutrix, PW-1 prosecutrix, PW-8 Kamlesh Kumar, the documentary and medical evidence adduced in respect thereof, came to the conclusion that the prosecutrix was below 18 years of age on the date of incident. After careful examination of the entire evidence, this Court finds no illegality or infirmity in the finding so recorded by the trial Court.

14. On the basis of aforesaid discussion, this Court is of the opinion that the prosecution has been successful in proving guilt of the appellants based on the evidence adduced by it beyond all reasonable doubt. Being so, conviction of the appellants recorded by the trial Court is hereby affirmed.

15. In the result, the appeal fails and is, accordingly, dismissed. The

appellants are reported to be in jail, therefore, no further order regarding their arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge