

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 07.09.2018

Judgment Delivered on : 14/09/2018

CR.A. No. 705 of 2015

Mahfooz Miyan, S/o. Jainul @ Jainu, Aged About 23 Years, R/o. Village Amtahi, Police Station Kusmi, District Balrampur -Ramanujganj Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Police Station Kusmi, District Balrampur Ramanujganj Chhattisgarh.

-----Respondent

For Appellant	: Mr. S.C. Verma, Advocate
For Respondent/State	: Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

14/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Special Judge, Surguja, Ambikapur, District – Surguja (C.G.), in Special Sessions Trial No.29/2011 on 29.05.2015 convicting the appellant for the offence under Section 376 of the Indian Penal Code and sentencing him to under go R.I. for 10 years along with fine of Rs.5,000/- and in default of payment of fine, the appellant is required to further under go R.I. for 1 year separately.

2. Facts of the case in brief is this that on 24.01.2010, at about 7.00 PM, the appellant came in a jeep and asked the prosecutrix, aged 11 years, who belongs to scheduled tribe to show the house of Samrath Nageshiya. The prosecutrix accompanied her in that jeep and she was forcefully taken to a lonely place, where she was raped by the appellant. After lodging of the FIR, the case was investigated and the charge-sheet was filed before the concerned Court.
3. Appellant was charged with offence under Section 376 of the Indian Penal Code and Section 3 (ii) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 10 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The prosecutrix herself has not identified the appellant in the Court. The witnesses examined by the prosecution are not reliable and their

evidence could not have been formed the basis for conviction against the appellant. In the alternative, it is prayed that in case, this Court is not inclined to allow this appeal and acquit this appellant, then this Court may be pleased to reduce the sentence of imprisonment imposed upon the appellant.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubt. The identity of the appellant has been clearly established in the evidence and all the witnesses have clearly supported the case of the prosecution. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The prosecutrix (P.W.-1) is 11 years old girl. She identified the appellant, when he was produced in custody, but could not recollect his name. She has stated that on the date of incident, the appellant asked her to show the house of of Samrath and then she sat in the vehicle to show his asked address. Subsequent to that, appellant took her near river and then raped her, this she has described very clearly in her statement. In cross-examination, she is bit shaken about identification of the appellant and then stated that she did not know the name of the appellant earlier. She is a child witness. Questions put to her by

defence counsel may show that she has shaken little, but there is no clear admission made by her, that appellant was not the person who has raped her.

8. Prosecutrix (P.W.-1) is also lodger of FIR (Ex.P-1). There is no such admission or contradictory statement in her cross-examination against the content of the FIR. Recording of FIR has been proved by A.S.I., Madwar Ram (P.W.-10), which has not been challenged in his cross-examination. FIR (Ex.P-1) is clearly named FIR against the appellant, which is a strong circumstance against the appellant.
9. Another important witness of identification, Sukhram (P.W.-2) is father of the prosecutrix, who has stated that after he came to know about the incident, he asked Mannu Miya to present his driver and on seeing the driver of Mannu Miya, the prosecutrix identified him as the person who had raped her. This witness has partly supported the prosecution case and the statement regarding the identity of the appellant by the prosecutrix, has remained un-rebutted in his cross-examination. Baldev Nagesiya (P.W.-3) and Samrath Nagesiya (P.W.-4) are hearsay witnesses. Additional Superintendent of Police, S.R. Diwan (P.W.-5) is the investigation officer, who has proved the investigative procedures.
10. Another relevant and main witness is Dr. Smt. Jagrani Lakda (P.W.-8), who examined the prosecutrix on 26.01.2010 and she

made assessment of her age about 10 years. On examining her private parts, she found her hymen torn in two places and it was painful. She prepared two vaginal slides and advised for FSL examination vide her report Ex.P-15. She has given this opinion that the prosecutrix was raped. Her statement has remained un-rebutted in cross-examination.

11. Smt. Savitri Baghel (PW.-9) is the Head Mistress of Primary School, Rajendrapur. She has given statement before the Court on the basis of the school register, the date of birth of the prosecutrix according to the school admission register (Ex.P-16) was 26.06.1999. Her statement has remained unchallenged in her cross-examination.
12. According to proof of school admission register, and the un-rebutted statement of Sukhram (P.W.-2) and also the assessment made by the Dr. Smt. Jagrani Lakada (P.W.-8), it is clearly established that the age of the prosecutrix on the date of incident was about 10-11 years.
13. After scrutinizing and analyzing all the evidence present on record of this case, I am of this opinion that the prosecution has proved its case beyond all reasonable doubt. The evidence of the prosecution witnesses inspire full confidence of the Court. The age of the prosecution had been about 10-11 years and she was raped on the date of incident by this appellant undoubtedly. According to the existing provisions of Section 376 of the Indian

Penal Code, on the date of incident, the punishment for rape with female child of below 12 years of age was not less than 10 years. Hence, it appears that the trial Court has imposed minimum sentence upon the appellant. Therefore, on the basis of these findings, I am of this opinion that there is no room for interference in the conviction and the sentence passed by the trial Court in the impugned judgment.

14. Resultantly, the appeal has no merit and is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram