

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 777 of 2014**

Nagorao S/o Late Vashudev Mudliyar Aged About 50 Years R/o
Bajrang Nagar, Thana Sarswati Nagar, Rev./civil Distt. Raipur
C.G. **---- Appellant**

Versus

State Of Chhattisgarh Through P.S. Sarswati Nagar, Rev. Distt. -
Raipur C.G. **---- Respondent**

For Appellant	: Shri Samir Singh, Advocate.
For Respondent/State	: Shri Ramakant Mishra, Dy. A.G.

Hon'ble Shri Manindra Mohan Shrivastava and

Hon'ble Shri Sanjay Agrawal, JJ.

Judgment On Board

23.06.2018

Per Manindra Mohan Shrivastava, J.

1. Heard.
2. This appeal is directed against impugned judgment of conviction and order of sentence dated 28.07.2014 passed by the Additional Sessions Judge (FTC), Raigarh (C.G.) in Sessions Trial No.245/2012, whereby the appellant has been held guilty of commission of offence under Sections 376 and 302 of I.P.C. and sentenced to undergo imprisonment for life with fine of Rs. 1000/- each and in default of payment of fine, additional R.I. for 2 months.
3. Unfortunate victim aged about 13 years was admitted in the hospital in burnt condition on 04.09.2012. Information was given in the Police Station Saraswati Nagar, Raipur and the police reached

the hospital and recorded FIR on the statement given by the victim at about 23:20 hours in which, it was stated by the victim that she was being raped by her own father for about last one month and on the date of incident at about 11:00 a.m., a dispute arose due to which, she was assaulted by the appellant. It was further recorded in the FIR that the appellant thereafter poured kerosene oil on her and then set her ablaze resulting in burn injuries. After B. R. Verma, ASI, the Investigating Officer (PW-10) got the prosecutrix medically examined, burn injuries were found on her body. Thereafter, the Investigating Officer requested the Executive Magistrate (PW-14), Harwansh Singh Miri, Tehsildar, Raipur for recording dying declaration. Dr. Nurendra Sahu (PW-16) reported that the victim is in a fit condition to give statement. Dying declaration (Ex.P.14) was recorded in the presence of the said doctor. In dying declaration (Ex.P.14), it was recorded that the victim was being raped by her own father for about last one month and upon a dispute, she was beaten up by him, kerosene oil was poured on her and she was set on fire. Later on, the victim died on 09.09.2012. The postmortem (Ex.P.25) was conducted and was proved in which, cause was shown to be death due to burn injuries.

4. After completion of investigation, charge-sheet was filed before the Executive Magistrate who, in turn, committed the case for trial to the Court of sessions. On the basis of the material contained in the charge-sheet, learned trial Court framed charges against the accused/appellant alleging commission of offence under Section 376 IPC and also under Section 302 IPC. The appellant abjured guilt and subjected to trial.

5. In order to prove its case, prosecution examined as many as 16 witnesses. The appellant was thereafter examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him. The appellant denied having committed the offence and took the defence that he has been falsely implicated and took the plea of alibi that at the time of incident, she was not present in the house. In support of his defence, the accused examined one Chhabi Ram Sahu as defence witness.

6. The learned trial Court, however, disbelieving the defence and relying upon the evidence led by the prosecution, particularly dying declaration of the deceased/victim, held the appellant guilty of commission of offence as discussed above and convicted as mentioned above.

7. Learned counsel for the appellant would argue that the prosecution has failed to prove its case beyond reasonable doubt. He would submit that looking to the nature and gravity of burn injuries, it is highly doubtful that the prosecutrix was physically fit to give dying declaration and the appellant ought not be held guilty on such doubtful evidence. The next submission of learned counsel for the appellant is that there is no clinching evidence on record led by the prosecution except as stated in the dying declaration that the victim was subjected to rape by the appellant. He further submits that even the doctors have not given any definite opinion with regard to the commission of rape on the prosecutrix. Submission of learned counsel for the appellant is that the plea of alibi is a plausible one. Considering the evidence of defence witness, the trial Court ought to have acquitted the appellant by giving him benefit of doubt. It is also

argued that even according to the evidence of the mother of the deceased i.e. Babli @ Parwati Bai (PW-1), the deceased was mentally weak, therefore, false implication of the appellant cannot be ruled out. He submits that it is a highly improbable story of the prosecution that the appellant would subject his own daughter to rape and would kill her.

8. Learned counsel for the State while opposing the contentions raised by learned Counsel for the Appellant, supports the impugned judgment of conviction and order of sentence and submits that present is a case of offence committed by the appellant, where he has not only committed rape of his daughter but also murdered her by setting her on fire. He would submit that the FIR lodged by the victim herself was proved by Investigating Officer B. R. Verma (PW-10) in which, the story has been narrated by the deceased/victim herself. It is next contended by learned counsel for the State that the doctor who examined the prosecutrix in burnt condition had given a report that the prosecutrix was in a fit condition to give dying declaration and thereafter, in his presence, the statement of the prosecutrix was recorded by the Executive Magistrate, who has also proved dying declaration prepared by him after recording the statement. In dying declaration, the deceased has clearly stated that kerosene oil was poured by her father and she was set ablaze. The burn injuries were found on the body of the deceased which supports the case of the prosecution and therefore, there is no escape and the defence evidence is an afterthought, rightly disbelieved by the trial Court.

9. We have heard learned Counsel for the parties and perused

the entire record minutely.

10. Present is a case of heinous offence. The prosecution case rests mainly on the dying declaration of the victim, 13 years old girl, who alleged that she was being subjected to rape by her own father for about one month and then, on an incident of quarrel, she was beaten up and thereafter kerosene oil was poured on her and then she was set on fire by her father.

FIR (Ex.P.16) has been proved by B. R. Verma (PW-10), the Investigating Officer of the case. In para 5 of his evidence, he has stated that on 04.09.2012, statement was given by the prosecutrix, on the basis of which, he registered offence in Crime No.233/2012 for alleged commission of offence under Sections 376 and 307 IPC against the appellant. He has proved his signature in the said document. In the cross-examination of this witness, no suggestion has been given to this witness that the said FIR was not recorded by him or that it was not recorded as disclosed by the victim.

In FIR (Ex.P.16), it has been recorded that the information was received in the police station on 04.09.2012 regarding admission of the victim in the hospital sustaining burn injuries whereafter, the Investigating BR Verma (PW-10) proceeded to the hospital and contacted the doctor to give report whether the victim was in a fit condition to give statement. Dr. Nurendra Sahu (PW-16) who was on duty, had reported that the victim was fit to give statement. The Executive Magistrate, Raipur was requested to record the statement whereafter, Tehsildar Harwansh Singh Miri (PW-14) came in and recorded dying declaration of the girl, who

stated before him that after she being subjected to rape by her father for about one month and on the date of incident about 11:00 a.m., was scolded for showing lesser amount after selling the bottles, though the same was higher, due to which, she was assaulted and then kerosene oil was poured on her and she was set on fire by her own father.

11. The mother of the prosecutrix Babli @ Parwati (PW-1) has produced the original mark-sheet of the victim and has stated that at the time of incident, the age of her daughter was 13 years, which is also reflected from the certificate. In her cross-examination, nothing could be elicited to dispute or doubt regarding the age of the girl. Sundar Bai (PW-4) stated that in her presence, police has seized the school certificate of the victim.

12. Dr. Neeta Karnawat (PW-13) has deposed that the victim was brought for her medical examination and she had examined her and found that she had sustained burn injuries on her face, neck and other parts of the body and was superficial to deep burn. She has deposed that smell of kerosene oil was also found. In her opinion, she has stated that the victim was brought before her within six hours of the incident. This statement of Dr. Neeta Karnawat (PW-13) has not been controverted. Dr. Nurendra Sahu (PW-16) has deposed that on 04.09.2012, at about 12:20 hours the victim was brought to burn unit of the hospital and upon examination, he found that she had sustained 46 percent burn injuries and thereafter, her treatment was started. The victim stated that on 04.09.2012 at about 11:00 in the morning, she was assaulted by her father and kerosene oil was poured on her and she was set ablaze. The doctor further states that

the victim also disclosed that she was being subjected to rape by her own father whenever she used to be alone at home. He states that he had treated the girl. He further deposes that on 04.09.2012 upon being referred, he had given opinion that the victim was in a fit condition to give her statement and report (Ex.P.14) has been proved by this witness. He further deposed that on the same day at 10:40 in the night, Tehsildar Harwansh Singh Miri (PW-14) recorded the statement of the victim and the statement (Ex.P.15) was taken in his presence and he has also proved his signature on Ex.P.15, which shows that during examination, the victim was in a fit condition. In his cross-examination, he has denied the suggestion that even before the opinion could be given by him, he started recording dying declaration along with the Tehsildar. Though an attempt has been made to impeach the credibility of the evidence by eliciting that the alleged time of giving opinion regarding dying declaration is one and the same i.e. 10:40 p.m., we do not think that it makes his statement doubtful only on this count.

13. Harwansh Singh Miri (PW-14) the Additional Tehsildar and Executive Magistrate has deposed that he had received letter (Ex.P.15) on 04.09.2012 for recording dying declaration of the victim whereafter on the same day sometime between 10:30-10:42 p.m. he reached the hospital and recorded the dying declaration of the victim in the presence of duty officer Dr. Nurendra Sahu (PW-16). He has further deposed that at the time of taking statement, he has also inquired whether the victim is in a fit condition to give statement regarding her place of residence, who are her parents, who brought her to the hospital etc. He further deposes that having found that the victim was in a fit condition to give statement, her statement was

recorded, in which, the victim stated that on 04.09.2012 at about 11:00 in the morning, the appellant poured kerosene oil on her and set her on fire due to which, she sustained burn injuries. He has also deposed that the victim in her statement also stated that her father was subjecting her to rape since last one month whenever her mother used to go out. She further stated that on 03.09.2012 also, she was subjected to rape. He has proved his report of dying declaration (Ex.P.15). This victim has been subjected to detailed cross-examination and it has been elicited that before recording dying declaration, the Executive Magistrate had met the doctor also. It has also been elicited in the cross-examination that at the time of recording statement, no police officer was present. He has denied suggestion that at the time of recording dying declaration, the doctor was not present. Though an attempt has been made to impeach the credibility of the witness with regard to the possibility of the time when the doctor gave opinion and dying declaration was recorded, we do not think that description of time is of such a nature that the evidence of victim should be disbelieved and the dying declaration itself should be discarded.

14. The contents of the dying declaration (Ex.P.15) clearly proves that the deceased girl, who was minor aged about 13-14 years, was assaulted and then kerosene oil was poured on her by her own father/appellant and then set ablaze.

15. The disclosure of the fact that she being raped by her father has been stated by the Dr. Nurendra Sahu (PW-16) in his own statement which has not been controverted in his cross-examination. This fact has also been recorded by the Executive Magistrate in the

dying declaration that the victim was being subjected to rape by her own father/appellant. Dr. Chandrashekhar Shrivastava (PW-12) who had examined the victim has stated that the hymen of the victim was not intact and was torn. Though the doctor has not given any definite opinion whether rape was committed on victim or not, but looking to her age and the vaginal condition as stated by the doctor and the testimony of Dr. Nurendra Sahu (PW-16) and what has been recorded in the dying declaration, the prosecution case that the victim was being subjected to rape by her own father is fully proved.

16. The plea of alibi raised by the appellant is liable to be disbelieved once we place reliance on the evidence led by the prosecution that the prosecutrix was assaulted by her own father and thereafter kerosene oil was poured on her and she was set on fire. Dr. Neeta Karnawat (PW-13) has clearly stated regarding the injuries and the smell of kerosene on the body of victim which remained uncontroverted, therefore, we have no doubt in accepting and relying upon Ex.P.25.

17. In the result, we do not find any ground to interfere in the impugned judgment of conviction and order of sentence. Accordingly, the appeal is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Sanjay Agrawal)
Judge