

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2807 of 1998

Manohar S/o. Dayaram Satnami, Aged about 25 years, R/o.
Village Boirdeer, Police Station Palari, District Raipur (C.G.)

----Appellant

Versus

State of Madhya Pradesh through Police Station Palari, District
Raipur (C.G.)

---- Respondent

For Appellant : Mr. Anand Kumar Gupta, Advocate
For Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

04.07.2019

1. Facts necessary for disposal of this appeal are that on 09.10.1987 the prosecutrix (PW-3) visited to her elder sister house at Boirdeeh and on the next day, i.e. on 10.10.1987 the family members had gone out for their work. The prosecutrix (PW-3) was present in the house along with Kuntibai (PW-2) at about 10.00 AM, the accused/appellant came there and sent Kuntiba for brining *Bidi*. When Kuntibai went for Bidi then the appellant came and bolted the door from inside and committed forcible sexual intercourse with her by gaging her mouth with the piece of cloth. After returned of family members, the disclouser was made followed by lodgment of the report (Ex.P-1). After medical examination, prosecution filed the *challan* and

eventually the charge was framed against the accused/appellant under Section 376 IPC.

3. Learned Court below vide judgment impugned 16.11.1998 has convicted the accused/appellant under Section 376 IPC and sentenced him to undergo RI for 7 years with fine of Rs. 5000/- plus default stipulations.
4. Counsel for the appellants/accused submit that the appellant has been falsely implicated and has not committed any offence. He further submits that had Bhukhau (PW-1) not seen the accused and the prosecutrix in a compromising position probably the report would not have been lodged which shows that its a case of consent. He submits that the trial Court has not properly appreciated the evidence available on record in proper perspective. Medical evidence also does not support the case of the prosecution.
5. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as mentioned above are based on the proper appreciation of the evidence on record and, therefore, no illegality or infirmity is traceable in the same worth interference in this appeal.
6. Before deciding the merits of the case this Court first thinks to deal with the fact whether on the date of the incident the prosecutrix was minor or not. No documentary evidence to establish her age such as school certificate etc have been filed

by the prosecution. However, the physical feature described by the Dr. (PW-13) while conducting her medical examination such as undeveloped breast, two fingers entered in her vagina with difficulty, absence of pubic hair was there and the prosecutrix was complaining pain in her private part on being touched are suggestive of the fact that her age on the date of incident was below 16 years. The report given by this witness mentions the age of the prosecutrix at that time to be 13 years. However, on the safer side she was referred to radiological examination for assessment of the correct age. Report of the radiologist suggests that at the relevant time the prosecutrix was aged between 14 and 15 years. However, examination of the radiologist to prove the said report could not take place for the reasons best known to the prosecution but it does not mean that mere non-examination of the radiologist would not over shadow the physical delicacies of the prosecutrix noticed by the doctor who medically examined her. Thus in view of this discussion the prosecutrix appears to have been below 16 years of age on the date of incident and was minor as such. As regards merit, it has come in the evidence that sensing helplessness of the prosecutrix in the absence of any elderly member in the house the accused/ appellant reached there, sent out the other girl for getting *Bidi*, took the prosecutrix inside and committed forcible sexual intercourse with her by inserting a piece of cloth in her mouth rendering her unable to attract the attention of the outsiders by raising her voice. Fortunately, Bhukhu (PW-1)

happen to be there and on being told about the prosecutrix and the accused/appellant being inside by Kuntibai, he got the door opened and saw the prosecutrix coming out weeping. Medical evidence describing several features including the pain complained by her and rupture of hymen also support the case of the prosecution. Thus, the overwhelming evidence on record clearly speaks the involvement of the accused/ appellant in ravishment of the prosecutrix who at that time was still in her minority. The finding of the Court below to this effect does not suffer from any illegality or infirmity convicting the accused/ appellant under Section 376 IPC. No interfere with the well reasoned judgment in this appeal is there. Being so the appeal has no merit and is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE