

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3043 of 1998

Order reserved on 31.07.2019

Order pronounced on 21.11.2019

Rangu @ Rajender Kumar, Son of Dhannu Uraon, aged about 25 years, R/o Village Kurandha, P. S. Shankar Garh, District Sarguja, MP (Now CG) --- Appellant

Versus

State of M.P., through the P.S. Shankar Garh, District Sarguja, MP (Now CG) --- Respondent

For Appellant : Mr. Aditya Khare, Advocate

For State/Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The case put-forth by the prosecution is that the accused/appellant committed repeated sexual intercourse with the prosecutrix (PW-2) and when she ultimately became pregnant through him, he forced her to get the same medically terminated.

2. An overview of the matter make the things clear that first of all in the month of January when the prosecutrix (PW-2) was returning from the shop after buying some household articles, the accused/appellant met her and made physical relations with her. According to the prosecutrix she did not disclose the incident to anyone out of shame. Prosecutrix case runs further saying that thereafter the accused/appellant again met her and had sexual intercourse which continued for days together. It is alleged by the prosecutrix that when she disclosed to the accused/appellant about her pregnancy through him, he took her elsewhere and administered some medicine causing termination of her pregnancy. Eventually, FIR (Ex.P-1) was lodged and she was referred for medical examination.

3. On the basis of material on record learned Court below found the prosecutrix to be a minor girl having been subjected to forcible and repeated sexual intercourse by the accused/appellant as a result of which

she conceived and then was forced to get her pregnancy medically terminated. Accordingly, learned Court below vide judgment impugned dated 08.12.1998 held the accused/appellant guilty under Sections 376 and 312 IPC with imposition of jail sentence of 7 years and 3 years on both counts respectively with fine of Rs.5000 and under each head, plus default stipulations.

4. Counsel for the accused/appellant submits that the prosecution has not adduced any evidence on the basis of which it could be conclusively held that on the date incident prosecutrix was below 16 years and as such minor for the purpose of Section 376 IPC. He further submits that conduct of the prosecutrix also makes it emphatically clear that the prosecutrix was a consenting party as in spite of permitting the accused/appellant to sex with her she did not make any disclosure to anyone and she did the same only when the accused/appellant forced her to get the pregnancy medically terminated. He further submits that the prosecution has not adduced any clinching evidence as regards the forcible sexual intercourse by the accused/appellant against her will and without her consent.

5. State counsel however supports the judgment impugned and submits that accused/appellant had perpetuated his act of forcible sexual intercourse with a 14 years old girl making her pregnant and ultimately compelled her to undergo medical termination of her pregnancy is a heinous offence and, therefore, he is not entitled for any benefit in this case.

6. Evidence of the prosecutrix (PW-2) categorically states that at the relevant time she was studying in Class 7th and at that time her age was 14 years. Even the mark-sheet of the prosecutrix of Class 6th seized under Ex.P-2 carries her date of birth as 04.08.1982. In other words, on the date of incident her age comes to be around 13 years. The school teacher (PW-8) has also proved the mark-sheet seized by the prosecution stating

her date of birth to be 04.08.1982. He has further stated that the said date of birth was recorded in accordance with the disclosure made by her father. PW-3 – Shivilal though has been declared hostile yet he has stated that the prosecutrix was seen by him lying near Manpur pond with presence of blood near her. Investigating Officer (PW-6) has also stated that when he went to spot on 14.07.1994 he saw the lump of blood being disclosed by the prosecutrix having human features such as limbs and eyes. Furthermore, though the doctor (PW-7) has described the development of physical features and the secondary sexual characteristics of the prosecutrix, it cannot be a conclusive evidence as regards her age particularly when the school register and the certificate disclose her to be minor, which has been duly supported by the school teacher (PW-8) issuing the same. Of course, the conduct of the prosecutrix *prima facie* speaks in favour of the accused/appellant but looking to the fact that she was minor on the date of incident, such things would not be of any advantage to the accused/appellant because she was not legally competent enough to understand the pros and cons of easily falling prey to his act involving serious implications of her vast future lying ahead. Being this, the contention of the counsel for the appellant that the prosecutrix was a consenting party is hereby struck down being without any substance. The physical features noticed by the doctor depend on various extraneous factors such as atmosphere in which she has been born and brought up and, therefore, the development of her physical build-up cannot be used against her. Similarly, the contention of counsel for the accused/appellant regarding existence of love affair between the appellant and prosecutrix on the basis of so called over letters exchanged between the two, is also of no help to the accused/appellant only for the simple reason that on the date of incident she was below 16 years of age and was not mature enough to comprehend the deep rooted consequences of the same.

7. In view of what has been discussed above, it is manifestly clear that the accused/appellant made the prosecutrix victim of his lust by subjecting her to repeated sexual intercourse which ultimately appeared in the form of pregnancy and that too he got the same medically terminated. The judgment impugned convicting and sentencing the accused/appellant under Sections 376 and 312 IPC does not suffer from any illegality warranting any interference by this Court.

8. Appeal thus being without any substance is liable to be dismissed and it is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)
Judge