

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-1-2019****Pronounced on 17-1-2019****CRIMINAL APPEAL 964/2007**

(Arising out of judgment of conviction and order of sentence dated 16-8-2007 passed by 12th Addl. Sessions Judge (FTC), Raipur, CG in Sessions trial No. 337/2006)

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Hemsingh Baghel S/o. Jagrakhan Baghel, aged 22 years, R/o. Stanami Para, village Kodwa, Thana Dharsiwa, district Raipur (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh through the District Magistrate Raipur (CG)

---Respondent

For appellant	: Mr. Sangeet Kumar Kushwaha, Adv.
For respondent/State	: Ms. Sangeeta Mishra, Govt. Advocate.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 16-8-2007 passed by 12th Addl. Sessions Judge (FTC), Raipur, CG in Sessions trial No. 337/2006 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
363, IPC	7 Years	1,000/-	6 months
366, IPC	7 Years	1,000/-	6 months
376, IPC	7 Years	1,000/-	6 months
506-II, IPC	3 Years	500/-	6 months

All the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that on the alleged date of incident prosecutrix was about 14 years old. She was resident of Satnamipara, Kodva. On 7-7-2006 at about 10 am she was standing on street in front of her house. Appellant reached there and took her in the house of Heeralal Banjare, gave threats to kill her and committed forcible sexual intercourse with her. She gave an application on 9-7-2006 to the police chowki Silyari. On very day, a '0' numbered FIR was lodged in police station Dharsiva. After completion of investigation, a charge sheet was filed against him. The trial Court framed the charges against him under Sections 363, 366, 376 and 506-II of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced the appellant as aforesaid.
3. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
4. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.
5. As per the alleged MLC report Ex. P-5, P.W. 3 Dr. D.R. Verma, had examined appellant and opined that he was capable to perform sexual intercourse.
6. There is no such evidence on record on the strength of which it can be said that Ex. P-5 is not believable, thus this Court believes on Ex. P-5.
7. As per RFSL report Ex. P-25, spermatozoa and semens were found on the slide marked as Article 'A', swab marked as Article 'B', one underwear of prosecutrix marked as Article 'C' and one another underwear of appellant marked as Article 'D'.
8. There is no such evidence on record on the strength of which it can be said that Ex. P-25 is not believable, thus this Court believes on Ex. P-25.
9. P.W. 7 prosecutrix says in para 1 and 8 of her statement given on oath recorded on 11-12-2006 that she is studying in Class 7th.

She had failed twice.

10. P.W. 9 Vishakhabai who is the grand mother of the prosecutrix, P.W. 10 Smt. Sonibai who is mother of the prosecutrix and P.W. 11 Taran Prasad Miri who is father of the prosecutrix say in para 1 of their statements given on oath recorded on 15-1-2007 that prosecutrix is running on 14 years of age.
11. There is no such evidence on record on the strength of which it can be said that aforesaid statements of aforesaid witnesses are not natural, not normal and not simple in the reference that at the time of alleged incident prosecutrix was below 18 years of age.
12. P.W. 7 Prosecutrix says in para 2 and 3 that appellant took her in the house of Heeralal Banjare, committed sexual intercourse and gave threats to kill her.
13. P.W. 9 Vishakhabai, P.W. 10 Smt. Sonibai and P.W. 11 Taran Prasad Miri say in para 1 of their statements that prosecutrix had told them that appellant took her in the house of Heeralal, committed forcible sexual intercourse with her, gave threats to kill her.
14. D.W. 1 Heeralal Banjare says in para 1 of his statement given on oath that family members of the prosecutrix had not told him about the incident. They had also not called meeting of the Panchayat.
15. In application Ex. P-12 entire alleged incident has been described.
16. There is no such evidence on record on the strength of which it can be said that Ex. P-12 is concocted and fabricated.
17. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 7 prosecutrix, P.W. 9 Vishakhabai, P.W. 10 Smt. Sonibai, P.W. 11 Taran Prasad Miri are not simple, not natural, not normal. Thus, this Court disbelieves aforesaid statements of D.W. 1 Heeralal Banjare in the reference that appellant had allegedly not committed offences.
18. Looking to the aforesaid facts and circumstances, this Court finds that prosecution has succeeded to prove the charges punishable under Sections 363, 366, 376 and 506-II, IPC against

the appellant.

19. Thus, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed. The appeal is accordingly dismissed. The conviction and sentences of the appellant under Section 363, 366, 376 and 506-II, IPC are hereby affirmed.
20. As per the report received from the office of Jail Superintendent, Central Jail, Raipur, as on 13-11-2018, the appellant has been released on 21-7-2012 after getting the benefit of remission extended to him. He had deposited the fine amount in jail. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge