

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 557 of 2010**

- Anil Gond, aged about 18 years, S/o Ramsingh R/o Village Morid, Thana, Uttai, District Durg (CG)

---- Appellant**Versus**

- State of Chhattisgarh through District Magistrate Durg, District Durg (CG)

---- Respondent

 For Appellant : Mr. Bharat Rajput, Advocate
 For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board

02.01.2019

1. Shri Yogesh Pandey, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Bharat Rajput, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred against the judgment of conviction and order of sentence dated 7.6.2010, passed by the 11th Additional Sessions Judge (FTC) Durg (CG), in Sessions Trial No. 214 of 2008 wherein the said Court has convicted the appellant for commission of offence under Sections 342 and 376 (1) of the IPC and sentenced him to undergo R.I. for three months and R.I. for 7 years and fine of Rs.500/- with default stipulations.

3. In the present case, prosecutrix is PW1. As per version of prosecution, on the date of incident i.e. 13th October, 2008, at

about 11.30 am, the prosecutrix was engaged in grazing the animals and at the instance of the appellant, she entered into the house of the appellant who took her inside and after undressing, committed rape with her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

4. Learned counsel for the appellant would submit as under:

- i) Looking to the conduct of the prosecutrix, she seems to be a consenting party
- ii) Looking to their age, physical relations out of love cannot be denied
- lii) The trial Court has overlooked the material irregularity and material contradictions in the statement of the witnesses, therefore, finding of the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. Prosecutrix (PW1) has deposed before the trial Court that on the date of incident she was grazing pigs and while returning to home, the appellant called her and when she entered into the court yard of the house of the appellant, he dragged her inside,

closed the door, undressed her and committed forceful sexual intercourse with her against her will and without her consent. Version of the prosecutrix is supported by the version of Smt. Sarswati (PW2), Punaram (PW7), Ganesh Ram Sahu (PW8) to whom the incident was informed. Again, it is supported by the version of Dr. I.K. Wadhwani (PW3) who examined the appellant and found him capable of committing sexual intercourse. Again, it is supported by the version of Dr. Alpana Agrawal (PW5) who estimated the age of the prosecutrix between 13-14 years. Dr. A.K. Sahu (PW9) who is Radiologist and examined the prosecutrix and after Ossification Test opined that the age of the prosecutrix is between 15-16 years. From the evidence of medical expert, it is established that the prosecutrix was below 16 years of age.

8. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. If the prosecutrix had been a consenting party, she would not have narrated the story to people of locality. Her conduct shows that she was not a consenting party as she is minor, not competent to give consent. There is no material contradiction in the statement of the prosecutrix and prosecution witnesses and all have deposed in one voice and therefore, it is not a case where material contradiction is established. Minor contradictions which do not go to the root of the case are insignificant and

therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

9. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

10. In the present case date of incident is 13th October, 2008 and matter was reported on same day at Police Station Uttai in which name of the appellant is mentioned as culprit and his act of rape is also established. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

11. After re-assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other prosecution witnesses.

12. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The arguments advanced on behalf of the prosecution is not sustainable. Wrongful confinement is an offence under Section 342 IPC and rape is punishable under Section 376(1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

13. Heard on the point of sentence.

The trial Court awarded minimum sentence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

14. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

15. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released, therefore, no order for his arrest etc. is required.

**Sd/
(Ram Prasanna Sharma)
Judge**

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