

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 2-5-2019****DELIVERED ON 3-5-2019****CRIMINAL APPEAL No. 1010/2008**

(Arising out of judgment of conviction and order of sentence dated 14-11-2008 passed by Addl. Sessions Judge, Sakti, Sessions Division Janjgir Champa (CG) in ST No. 134/2008)

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Motichand Sahu, aged 32 years, S/o. Shriram Sahu, R/o. Village Dodhki, Thana Sakti, Distt. Janjgir Champa (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through the District Magistrate, Janjgir, Distt. Janjgir Champa (CG)

---Respondent

For appellant : Shri Rajbahadur Singh, Adv.

For State : Shri S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 14-11-2008 passed by Addl. Sessions Judge, Sakti, Sessions Division Janjgir Champa (CG) in ST No. 134/2008 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
376(2)(f) Indian Penal Code (in brevity 'IPC')	10 Years	1,000/-	6 months
342, IPC	1 year	---	
366(a), IPC	7 years	1,000/-	6 months

All the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that at the time of alleged incident prosecutrix was aged about 6 years, she was a resident of village Dodhki. On 8-4-2008 at about 3.30 pm appellant took her to his house, confined her and committed forcible sexual intercourse with her. On very day her Badi Maa Smt. Basant Bai lodged an FIR in PS Sakti.

After the investigation, a charge sheet was filed against him. After completion of trial, trial Court convicted and sentenced him as aforesaid.

3. Counsel for the appellant submits 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 charge.

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 Ex. P-27, P.W. 24 Dr. Anil Pratap singh after examination of X ray film opined that the age of prosecutrix was between 6 to 8 years.

6. There is no such evidence on record on strength of which it can be said that Ex. P-27, is not believable. Thus this court believes on it.

7. As per alleged MLC report Ex. P-9, P.W. 8 Dr. Smt. C.K. Singh had examined prosecutrix and found one lacerated wound over right lateral wall of vagina. She opined that as to the said lacerated wound it could be due to forceful sexual intercourse.

8. There is no such evidence on record on strength of which it can be said that Ex. P-9, is not believable. Thus this court believes on it.

9. As per alleged MLC report Ex. P-26, P.W. 23 Dr. Sarita Agrawal had examined prosecutrix in the course of reference and found one midline vertical perineal tear above the annul entry. In internal examination she found one midline tear in the vagina. She opined that said injury could be caused due to forceful introduction of heart and blunt object.

10. There is no such evidence on record on strength of which it can be said that Ex. P-26, is not believable. Thus this court believes on it.

11. As per the alleged MLC report Ex. P-24, P.W. 21 Dr. R.S. Thakur had examined appellant and opined that he was able to perform sexual intercourse.

12. There is no such evidence on record on strength of which it can be said that Ex. P-24, is not believable. Thus this court believes on it.

13. P.W. 1 Prosecutrix says in para 1 of her statement given on oath that appellant took her to his house and committed forcible sexual intercourse with her.

14. P.W. 2 Basant bai says in para 1 of her statement given on oath that prosecutrix had told that appellant took her to his house and committed forcible sexual intercourse with her.

15. P.W. 3 Durga Prasad who is father of the prosecutrix says in para 1 of his statement given on oath that Smt. Basant Bai had told him that appellant took the prosecutrix and committed forcible sexual intercourse with her.

16. P.W. 4 Smt. Kalawati bai who is mother of the prosecutrix says in para 2 of her statement given on oath that prosecutrix had told her that the appellant took her to his house, closed door and committed forcible sexual intercourse with her.

17. P.W. 5 Smt. Prembai says in para 1 of her statement given on oath that prosecutrix had told that the appellant took her to his house and lying down in the room.

18. P.W. 7 Chandrika Prasad who is the then Sarpanch says in para 1 of his statement given on oath that Smt. Basant Bai had told him that appellant had committed wrong act with prosecutrix.

19. D.W. 1 Moti Chand Sahu who is the appellant says in para 1 of his statement given on oath that on 8-4-2018 at about 7.30 am he had gone to village Bagbudhva for **ploughing**, his tractor went out of order, he had left his tractor at Yadav garage at Sakti for repairing the same. Thereafter he went to village Mahuadih.

20. There is no such evidence available on record on the strength of which it can be said that aforesaid statements of P.W. 1 Prosecutrix, P.W.2 Smt. Basant Bai, P.W.3 Durga Prasad, P.W. 4 Smt. Kalawati Bai, P.W. 5 Smt. Prembai, P.W.7 Chandrika Prasad are not simple, not natural and not normal.

21. In alleged FIR Ex. P-1 entire alleged incident has been narrated. There is no such material available on record on strength of which it can be said that Ex. P-1 is fabricated or concocted.

22. Looking to the above mentioned facts and circumstances of the case, this Court disbelieves the aforesaid statement of DW 1 Moti

Chand Sahu.

23. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charges punishable under Sections 376(2)(f), 342 and 366(a), IPC against the appellant.

24. After appreciation of the evidence discussed herebefore, 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.

25. The appeal is accordingly dismissed. The conviction and sentences of the appellant are hereby affirmed.

26. As per the report received from the Jail Superintendent, Central jail Bilaspur the appellant has been released on 25-11-2015 after getting the benefit of remission extended to him. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge