

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 91 of 2011

- Nandkeshwar @ Gudwa S/o Jalkheri @ Harkhu aged about 35 years, R/o Dabra, Thana Rajput Distt. Surguja (C.G.).

---- Appellant

Versus

- State Of Chhattisgarh Through the District Magistrate, Ambikapur, Distt. Surguja (C.G.)

---- Respondent

For Appellant	:	None.
For Respondent	:	Mr. KK Dewangan, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

22/07/2019

1. By the impugned judgment dated 14/12/2010 passed in S.T. No. 04/2010 by the learned Third Additional Session's Judge (FTC), Ambikapur, District Surguja (C.G.), the Appellant has been convicted for the offence punishable under Section 376(1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs. 1,000/-, with default stipulation.
2. According to prosecution story, victim girl was mentally disordered from her childhood and residing with her mother i.e. Bhagmaniya

Bai (PW-3). On 08.10.2009. Bhagmaniya Bai lodged a report in police station with the averment that on 07.10.2009, the Appellant came to her door and asked for liquor, she denied, saying that liquor is not available, thereafter, she returned inside her house. At that time, her daughter/prosecutrix was present near the door. After sometime, her mother found that prosecutrix was not in home. On being searched, she found that the Appellant committing sexual intercourse with her daughter at the back of courtyard. On being shouting, the Appellant flee away from the spot. A report was made in police station by Bhagmaniya Bai (PW-3). The incident was also witnessed by Pramila Gupta (PW-4) daughter-in-law of Bhagmaniya Bai. The prosecutrix was medically examined by Dr. Shipra Vishwas (PW-6). Her report is (Ex. P-17). Statements of the witnesses have been recored under Section 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed. Trial Court has framed the charged against the Appellant under Section 376(1) of the IPC. To prove the guilt of the Appellant, the prosecution has examined as many as 11 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C. was recorded, wherein he has pleaded their innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant for the offence punishable under Section 376(1) of the IPC and sentenced him as mentioned in paragraph one of this

judgment. Hence, this appeal.

4. A certificate of incarceration dated 27.07.2019 sent by the Jail Superintendent, Central Jail, Ambikapur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and already released on 26.03.2015.
5. Since no one appears for the Appellants today, I decide this appeal on merits.
6. I have heard Learned Counsel appearing for the State and perused the record to assess the correctness of the impugned judgment of conviction.
7. Since, prosecutrix of the case was mentally disordered from her childhood, therefore, he was not able to examined before the Trial Court as witness nor cited as a witness by the prosecution. The case of the prosecution is based upon the statements of her mother i.e. Bhagmaniya Bai (PW-3) & Pramila Gupta (PW-4). In the Court statement of Bhagmaniya Bai (PW-3), she deposed that on the date of incident at around 4 PM, when she was in her home, at that time, her daughter/prosecutrix was outside near her home, she called her daughter, but she did not come. After hearing unusual sound, she went to backside of her house, she found that the Appellant committing sexual intercourse with her daughter/prosecutrix. This witness further deposed the fact that when she shouted, the Appellant ran away from the spot. As

further stated by this witness that Vijay, Sarju and Pramila was also seen the Appellant when he flee away from the spot. Thereafter, she lodged a report in concerned police station vide Ex. P-2. The above statement of this witness is duly corroborated by Pramila Gupta (PW-4). From the statement of (PW-2) ASI A. Toppo, it is clear that immediately after the incident, report was lodged by Bhagmaniya Bai (PW- 3). From the entire evidence available on record, it makes clear that at the time of commission of offence, the Appellant committed sexual intercourse with the prosecutrix, who was a mentally disordered girl. There is sufficient evidence available on record against the Appellant. Thus, the learned trial Court has rightly convicted the Appellant.

8. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

Sd/-

(Arvind Singh Chandel)
Judge