

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 156 of 2011**

Santosh Kumar Banjare, S/o Rasiya @ Amrut Ram Banjare, aged 19 years, R/o Thakurdiya, Back side of Santoshi Rice Meal, Tahsil Kharsiya, District- Raigarh (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through S.H.O. Police Station- Kharsiya, District- Raigarh (C.G.)

---- Respondent

For Appellant : None.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

02/01/2018

1. Mr. J.K. Shastri, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. S.K. Guha, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 31.01.2011 passed by Fourth Additional Sessions Judge (FTC), Raigarh (C.G.) in Session Trial No. 62/2010, wherein the said court convicted the appellant for commission of offence under Section 376 (2)(f) of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 5000/- with further default stipulations.

3. As per version of the prosecution, prosecutrix/ victim in the present case is aged about 3 years. It is alleged that on 07.03.2010 at about 9:30 p.m., the appellant committed rape upon the prosecutrix in the house of one Durgesh after taking her in the house. The matter was reported by mother of the prosecutrix as per Ex.-P/1 and after completion of trial, the trial court convicted as mentioned above.
4. This appeal is preferred on the following grounds :-
 - (i) It is a case of attempt to rape, but the trial court convicted the appellant under Section 376(2)(f) of IPC which is not sustainable.
 - (ii) The trial court has not evaluated the defence witnesses which also deserves consideration for proper adjudication of the case.
 - (iii) Report of the medical examination is not produced before the trial court and the trial court failed to observe this important aspect of the case.
 - (iv) There is dispute regarding possession of land between both the families, therefore, the appellant has been falsely implicated.
 - (v) The trial court has not evaluated the evidence in its true perspective and the same is liable to be reversed.
5. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and

the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. Sangeeta Tiwari (PW-2) is mother of the prosecutrix/victim. As per version of this witness, the appellant gave his mobile to children of the locality and they were playing with the said mobile. In the meanwhile, her son Sourabh Tiwari (PW-1) taken the victim. When he searched about victim at about 9:30 p.m. and gone to the house of one Durgesh, he saw that the appellant was enraging and committing intercourse with her minor daughter and on his asking, the appellant stands up from the place and he saw that semen was discharging from the appellant's private part.
7. Version of this witness is supported by version of Sourabh Tiwari (PW-1), Karan Tiwari (PW-3), Vimla Bai (PW-4), Jeet Narayan Tiwari (PW-5), Ganeshi Bai (PW-6), Saraswati Khatri (PW-7), Manju Tiwari (PW-8). All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. Dr. Chandrakala Shrivastava (PW-10) examined the prosecutrix and found that private part of the prosecutrix was having reddishness and swelling. Again, she found back side of hymen and fourchette were torn. Looking to evidence of medical expert, it is clear that there was partial penetration which falls within definition of rape. Dr. T.K. Sahu (PW-18) examined the appellant and found him capable of intercourse.

9. Looking to the entire evidence and further looking to the FIR which is recorded on the date of incident i.e. on 07.03.2010 (Ex.-P/1), the trial court came to conclusion that it is a rape against a girl below age of 12 years which falls within mischief of Section 376(2)(f) of IPC.
10. Statement of Sangeeta Tiwari (PW-2) 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 daughter by sacrificing and jeopardizing her future prospect.
11. There is no delay in lodging report and this Court has no reason to say that the appellant has been falsely implicated. Evidence of the prosecution witnesses is natural and therefore, the same can be basis for conviction.
12. The trial court has elaborately discussed the entire evidence and after reassessing the evidence, this Court has no reason to record contrary finding. Commission of rape by the appellant is offence punishable under Section 376 (2)(f) of IPC for which the trial court awarded the appellant with minimum imprisonment for 10 years and less than minimum cannot be awarded. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

13. The trial court awarded R.I. for 10 years which cannot be termed as harsh, disproportionate or unreasonable looking to

the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

14. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 79 of 2019**

- Santosh Kumar Banjare S/o Rasiya @ Amrut Ram Banjare Aged About 19 Years R/o Thakurdiya ,back Side Of Santosh Rice Meal ,tahsil Kharsiya ,district Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through S.H.O. Police Station- Kharsiya ,district Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

 For the appellant : None appears
 For the respondent/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****07-01-2019**

1. Perused the judgment delivered in CRA No.156 of 2011 (Santosh Kumar Banjare s/o. Rasiya @ Amrut Ram Banjare vs. State of Chhattisgarh) by this Court on 2-1-2019 wherein judgment dated 2-1-2018 has wrongly been mentioned in place of correct date 2-1-2019.
2. Accordingly, it is directed that in the judgment delivered in CRA No. 156 of 2011 in place of judgment dated 2-1-2018, it be read as 2-1-2019. The rest of the judgment shall remain intact.
3. In view of the above, the instant CRMP stands disposed of. A copy of this order be kept in the original file of CRA No. 156 of 2011.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju