

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.110 of 2011**

Naresh Kumar Verma, S/o Heera Singh Verma, aged about 21 years, R/o T.T.C. Colony, Mana Camp, P.S. Mana Camp, Raipur, District Raipur, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through District Magistrate, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****16.7.2019**

- The instant appeal has been preferred against the judgment dated 25.1.2011 passed by the 14th Additional Sessions Judge (FTC), Raipur in Sessions Trial No.210 of 2010, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(c) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation

- Case of the prosecution, in brief, is that on the relevant date, age of the prosecutrix (PW12) was about 12 years. She was a student of Class 4 and was residing and studying in Government Handicapped School, Mana. The Appellant was working in the said school. On 2.7.2010 at about 10:00 p.m., allegedly, the Appellant committed sexual intercourse with the prosecutrix in the office of the school and also threatened her of life. After the incident also, he threatened her not to disclose the incident to

anyone otherwise he will kill her. After 2-3 days of the incident, the prosecutrix narrated the story to Indrani Pal (PW6), Pinki (PW4), Bindu Verma (PW10), Sangita Pandey (PW3) and Sharad Chandra Tiwari (PW11). On 13.7.2010, First Information Report (Ex.P14) was lodged by the prosecutrix on the basis of which offence under Section 376 of the Indian Penal Code was registered against the Appellant. The prosecutrix was medically examined by Dr. Parmeshwarilal (PW1). Her report is Ex.P1 in which she opined that no internal or external injury was found on the body of the prosecutrix. Her hymen was old ruptured. No swelling was found. Her vagina was admitting one finger easily. The doctor further opined that there was possibility of commission of sexual intercourse with the prosecutrix. The Appellant was examined by Dr. Shiv Kumar Agrawal (PW7). His report is Ex.P8 in which he opined that the Appellant was capable to perform sexual intercourse. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed and charges were framed against the Appellant.

3. In support of its case, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the

conviction is based on the statement of the prosecutrix (PW12) only. Other witnesses have not supported the case of the prosecution. The prosecutrix, during her cross-examination, has categorically admitted the fact that the Appellant has not committed any wrong with her and she stated against him on being tutored by Indrani Pal (PW6). Despite that, the Trial Court has convicted the Appellant. The statement of the prosecutrix is not reliable. No other evidence is available against the Appellant.

6. Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW12), in her Court statement, in paragraph 5, has stated that the Appellant took her in the office and after removing her *pajama* committed bad with her twice. She has further deposed that in the said night itself she told about the incident to Indrani Pal (PW6). During her cross-examination, in paragraph 16, she has stated that the Appellant had not committed any bad thing with her and on being tutored by Indrani Pal (PW6), she had stated so against the Appellant. During her re-examination, in paragraph 18, the prosecutrix has admitted the fact that in her statement (Ex.P19) recorded under Section 161 of the Code of Criminal Procedure, she had told that the Appellant had called her in the office on 2.7.2010 at about 10:00 p.m. and after removing her clothes deliberately he committed sexual intercourse with her. Again in paragraph 19, during her cross-examination, the prosecutrix has deposed that the police had not taken her any

statement nor had she stated to the police that the Appellant had taken her in the office and after removing her clothes he committed sexual intercourse with her.

9. Dr. Parmeshwarilal (PW1) is the witness who examined the prosecutrix. Her report is Ex.P1 in which she has opined that no internal or external injury was found on the body of the prosecutrix. Her hymen was old ruptured. No swelling was found. Her vagina was admitting one finger easily. She has further opined that there was possibility of commission of sexual intercourse with the prosecutrix.
10. Ashok Tiwari (PW2) is the witness who was Superintendent of the Government Handicapped School, Mana. He had given a certificate (Article A) to the police issued by the Government Hospital, Raipur according to which age of the prosecutrix was 11 years.
11. Sangita Pandey (PW3) and Pinki (PW4) have not supported the case of the prosecution and turned hostile. Vinita Sharma (PW5) has only stated that on 3.7.2010 in the night, Indrani Pal (PW6) had told her that the Appellant had committed rape with the prosecutrix. During cross-examination, Vinita Sharma has stated that Indrani Pal had told her that something wrong was done with the prosecutrix. This witness has also stated that she had not inquired anything from the prosecutrix. Contrary to this, Indrani Pal (PW6) has stated that on 3.7.2010 in the night, the prosecutrix had gone along with her to Vinita Sharma (PW5) and told that the Appellant had teased her.

- 12.** Dr. Shiv Kumar Agrawal (PW7) is the witness who medically examined the Appellant. His report is Ex.P8 in which he has opined that the Appellant was capable to perform sexual intercourse.
- 13.** Patwari Pardeshiram (PW8) prepared spot-map (Ex.P7). Omprakash Raghuvanshi (PW9), who was also posted in the said Government Handicapped School, has only stated that some employees had told him that the Appellant had teased the prosecutrix. Then he asked the prosecutrix. The prosecutrix sometimes told him that the Appellant had teased her, but sometimes she told him that the Appellant had not done anything with her.
- 14.** Bindu Verma (PW10) is also one of the employees of the said Government Handicapped School. She has also stated that from some of the employees she came to know that the Appellant had teased the prosecutrix, but on being asked from the prosecutrix, she told her nothing about any teasing to her by the Appellant. Both Omprakash (PW9) and Bindu Verma (PW10) have been declared hostile.
- 15.** Sharad Chandra Tiwari (PW11), the Incharge Director of the Government Handicapped School, Mana has stated that on 3.7.2010, in the night, Indrani Pal (PW6) informed him telephonically that the Appellant had teased the prosecutrix. Thereafter, on 5.7.2010, when Indrani Pal came on duty, he called the prosecutrix and asked from her. The prosecutrix told him that the Appellant had only asked the prosecutrix to go out of the room.

16. Inspector S.N. Akhtar (PW13) is the witness who investigated into the offence in question.
17. From the evidence available on record, it is clear that Sangita Pandey (PW3), Pinki (PW4), Indrani Pal (PW6), Omprakash Raghuvanshi (PW9), Bindu Verma (PW10) and Sharad Chandra Tiwari (PW11) have not supported the case of the prosecution. Only Vinita Sharma (PW5) has stated that on 3.7.2010 in the night Indrani Pal had told her that the Appellant had committed rape with the prosecutrix. But, Indrani Pal (PW6) has not supported the above statement of Vinita Sharma (PW5). Though in paragraph 5 of examination-in-chief, the prosecutrix (PW12) has stated that the Appellant had taken her in the office and after removing her *paijama* had committed sexual intercourse with her twice, in paragraph 16 of her cross-examination, she has stated that the Appellant had not done anything with her and on being tutored by Indrani Pal (PW6) she stated that the Appellant committed wrong thing with her. Again this witness, at the time of re-examination in paragraph 18, has stated that in her police statement (Ex.P19) recorded under Section 161 of the Code of Criminal Procedure, she had stated that on 2.7.2010, at about 10:00 p.m., the Appellant had taken her in the office and after removing her clothes forcibly committed sexual intercourse with her. Again in paragraph 19, this witness has stated that she had not stated anything to the police. Thus, from the statement recorded before the Trial Court, it is clear that the prosecutrix was not firm about making her statements and she was changing her statements at all stages of recording of her statements before the Trial Court. Other witnesses have also not supported the case of the prosecution. Therefore, looking to the

contradictory statements of the prosecutrix, without corroboration from the statements of other witnesses, believing her statement would be difficult. Thus, the conviction imposed upon the Appellant by the Trial Court relying upon the statement of the prosecutrix is not proper.

- 18.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
- 19.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge