

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1071 of 2015**

Judgment Reserved On : 16/05/2019

Judgment Delivered On :12/07/2019

- Lallu Ram Sahu S/o Dina Sahu Aged About 25 Years R/o Village Sipahi, O. P. - Fastarpur, P. S. - Mungeli, District - Mungeli Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through O. P. - Fastarpur, P. S. - Mungeli, District - Mungeli Chhattisgarh.

---- Respondent

For Appellant : Smt. Kiran Jain, Advocate.

For Respondent/State : Shri Santosh Bharat, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Rajani Dubey, JJ

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. The appellant would call in question the legality and validity of the impugned judgment dated 19.8.2015 passed by the Additional Sessions Judge (FTC), Bilaspur in Special ST No.54/2014 whereunder he has been convicted for offence under Sections 4 of

the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act, 2012') & under Section 450 of the IPC and sentenced to undergo imprisonment for life & to pay a fine of Rs.4,000/- and to undergo RI for 4 years & to pay a fine of Rs.1,000/-, with usual default stipulations, respectively.

2. Prosecution case, as appearing from the material available on record, is that at about 5 pm on 4.5.2013, the appellant committed house trespass by entering into the house of the prosecutrix and on the pretext of seeking water, he bolted the door from inside, pushed the prosecutrix on the ground, undressed her and committed forcible sexual intercourse. After some time, her parents called the prosecutrix on which she came out of the house weeping and when the parents asked her as to the reasons for her weeping, she disclosed them about the act committed by the appellant. At this point of time, the appellant was in other room and fled away.
3. FIR (Ex.-P/1) was lodged at about 20.50 hours on the date of incident itself. The prosecutrix was medically examined by (PW-11) Dr. Neha Lal, who submitted the medical report (Ex.-P/9) opining that on external examination the prosecutrix was not found to have any signs of struggle or injury. She did not accord any definite opinion about commission of rape but she found the

prosecutrix complaining of pain in vagina. After recording case diary statements of witnesses, charge sheet was filed for commission of offence under Sections 450 & 376 (2)(अ) of the IPC and Section 4 of the Act, 2012.

4. In course of trial, the prosecution examined 12 witnesses whereas the accused examined one witness in his defence. Based on the evidence available on record, the appellant has been convicted as aforestated.
5. Learned counsel for the appellant would submit that there is no proof that the prosecutrix was less than 18 years of age on the date of incident, therefore, offence under Section 4 of the Act, 2012 is not made out. It is also argued that from the prosecution evidence it is proved that the prosecutrix was a consenting party, therefore, offence under Section 376 of the IPC is also not made out.
6. The prosecutrix has been examined as PW-1. She has fully supported the prosecution case by reiterating the allegations as contained in the FIR and in her case diary statement. She has denied that there was any loan transaction between her father and the appellant or that only altercation and manhandling had taken place between her father and the appellant. She has also denied that she has failed 4 times in class-5th and would state of

her own that presently she is studying in class-5th. She also says that her younger sister Yamuna is aged about 8 years and is studying in class-3rd. She denies that she is more than 18 years of age.

7. The prosecutrix's mother Soni has been examined as PW-2. She supports the prosecution with further statement that her daughter is presently aged about 11 years. She also denies that her husband had taken loan of Rs.10,000/- from the appellant's father.
8. Pardeshi (PW-3) is the father of the prosecutrix. He has also supported the prosecution and would deny that he had taken loan of Rs.10,000/- from the appellant's father.
9. The prosecution has examined (PW-4) Virendra Kumar Bhardwaj, a Teacher and In-charge Headmaster of Government Primary School, Sipahi, District Mungeli where the prosecutrix studied from class-1. He has proved original Dakhil Kharij register (Ex.-P/4) and its copy (Ex.-P/4A), as also the certificate (Ex.-P/5) where the date of birth of the prosecutrix is mentioned as 12.12.2001. Thus there is prima facie evidence that the prosecutrix was less than 18 years of age on the date of incident.
10. Although the accused has examined (DW-1) Ferha Sahu in his defence to prove that there was loan transaction between his

father and the father of the prosecutrix, however, in cross-examination, he admits that there was rumour in the village that the appellant has committed sexual intercourse with the prosecutrix. This witness denies any knowledge that allegation of rape is false accusation because of loan transaction.

11. Considering the nature of evidence available, particularly, prompt FIR and the medical report wherein the prosecutrix had complained of pain in the vagina and her categorical statement duly supported by the statements of her parents, present appears to be a case wherein the prosecution remained successful in proving its case beyond all reasonable doubt. The trial Court has not committed any illegality in convicting the appellant for offence under Section 4 of the Act, 2012 and Section 450 of the IPC.
12. The Appeal being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Rajani Dubey)

Barve