

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1320 of 2014

Shobharam Netam, S/o. Ghanaram Netam, Aged About 50 Years, R/o. Village Chandeli, P.S. Charama, Civil and Rev. Distt. North Bastar Kanker C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through : The P.S.- Charama, Civil and Rev. Distt. North Bastar Kanker C.G.

-----Respondent

For Appellant	: Mr. Amit Kumar Sahu, Advocate
For Respondent/State	: Mr. Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Fast Track Court for trial of Sexual Offences (Rape Cases), Uttar Bastar, Kanker (C.G.), in Sessions Case No.5/2014 on 25.11.2014, convicting the appellant for the offence under Section 376(2) (L) of the Indian Penal Code and sentencing him to under go R.I. 10 years and fine of Rs.500/- with default stipulation.

2. Facts of the case in brief is this that on 07.10.2013, Gendi Bai (P.W.-2) witnessed that this appellant was committing offence of rape with prosecutrix, who is a mentally retarded woman of age about 28 years. She informed about this incident to the villagers and thereafter FIR, Ex.P-1 was lodged by Udali Bai (P.W.-1). On that basis, offence was registered against the appellant. The case was investigated and after completion of investigation charge sheet was filed.
3. Appellant was charged with offence under Section 376(2) (L) of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 11 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel for appellant that the appellant has been erroneously convicted for the offence as aforesaid without there being evidence of prosecution beyond reasonable doubt. It is submitted that Udali Bai (PW-1) has not made any specific statement that her daughter was mentally retarded or of unsound mind. According to the admissions made by her in cross examination, Gendi Bai (P.W.-2) had some animosity with Udli Bai (PW-1), because of which, she has played

a role in initiating this matter. Similarly, Gendi Bai (PW-2) has also not stated about the mental condition of the prosecutrix. The examining Dr. Ranjana Gupta (P.W.-8) in her report vide Ex.P-3 given no specific opinion regarding the occurrence of recent sexual intercourse with the prosecutrix. Therefore, because of such lacunae in evidence, the appellant was entitled for acquittal in this case. On the other hand, it is also submitted that the appellant is in jail since 12.10.2013. It is prayed in the alternative, that in case, this Court is not inclined to allow this appeal and acquit the appellant then, at least sentence imposed upon the appellant, which appears to be too harsh may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Although Udali Bai (P.W.-1) refrained from making statement regarding mental condition of her daughter but the prosecutrix was examined by Dr. Prakash Narayan (P.W.-10), who has clearly stated that the prosecutrix was suffering from mental illness, which is scientifically named as Paranoid Schizophrenia. Apart from that Gendi Bai (P.W.-2) is the eye witness of this case, therefore, no case is made out for acquittal or for reduction of sentence as the appellant has been sentenced with the minimum sentence, which is required to be imposed in such cases. Hence there is no room for interference in the impugned judgment, therefore, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Gendi Bai (P.W.-2) has stated that on the date of incident, when she was on her way to the fields, she saw that the appellant was having sexual intercourse with prosecutrix. She went near the appellant and scolded him saying that the prosecutrix is mentally unsound. Thereafter, she informed about this incident to the mother of the prosecutrix Udali Bai (P.W.-1) and a meeting was also held in the village on the next day. In cross examination she has remained firm on her statement and there is no such admission made by her so as to hold that her statement in examination-in-chief has been contradicted.
9. Udali Bai (P.W.-1) is the mother of the victim prosecutrix, who has admitted about lodging of F.I.R., Ex.P-1. She has not made any statement regarding mental condition of the prosecutrix, because of which, she was declared hostile and leading question was put to her but she did not make any admission. Witness Sukdev Ram (P.W.-3) was present in the meeting, where Gendi Bai (P.W.-2) informed about the incident. This statement has remained unrebutted in cross examination. Hemlal (P.W.-4) and Ashok Netam (P.W.-5) have similarly stated and they also have

remained firm in their statement.

10. Dr. Ranjana Gupta (P.W.-8) examined the prosecutrix on 07.10.2013 and found that she was mentally weak. On the basis of the findings, this witness has opined in her report vide Ex.P-3 that any definite opinion cannot be given regarding the forceful sexual intercourse with the prosecutrix. But she has stated in her report about inflammation in the private part of the prosecutrix and regarding the tear in the hymen, which according to her was 48 to 72 hours old. Despite these findings, this witness has refrained from giving clear opinion. Evidence of examining doctor has relevance only regarding the opinion and on the basis of the findings this Court does not agree with the opinion given by the doctor and on the contrary this Court has its own opinion that on the basis of the injury and inflammation found on the private part of the prosecutrix, it is clearly suggestive of this fact that the prosecutrix was ravished sometime before she was examined by the doctor. Therefore, the conclusion of the trial Court on this point is that the prosecutrix was ravished, needs no interference and also on the basis of the evidence of eye witness, supporting witness, which is evidence beyond reasonable doubts, it has been clearly made out that the prosecutrix was subjected to sexual intercourse by the appellant on the date of incident.
11. As the witnesses have not made clear statement regarding mental condition of the prosecutrix, the prosecution has examined Dr. Prakash Narayan (P.W.-10), who is a psychiatrist,

who has stated that the prosecutrix was under his treatment since 1998. The prosecutrix was suffering from Paranoid Schizophrenia and she was continuously under his treatment. His statement has remained unrebutted in cross-examination.

12. According to the order sheet dated 5.9.2014 of the trial Court, the prosecutrix had appeared, before the Court below and the Court itself has observed that prosecutrix appeared to be mentally retarded and she was unable to respond to the questions put to her. The Court also observed other features suggestive of her mental condition and therefore, recorded reasons for not finding her as a competent witness. The observation of Court is also mentioned in Para -21 of the impugned judgment. Therefore, on this basis, it is found that there is sufficient evidence to hold that the prosecutrix was a woman suffering from mental illness, therefore, it is a case in which the commission of offence under Section 376 (2) (L) is clearly made out, in which the minimum sentence prescribed is 10 years R.I.
13. Resultantly, the appeal has no merit and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge