

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2434 of 1999

Order reserved on 14.08.2019

Order pronounced on 05.09.2019

Dakalu alias Devalu S/o Hirsai Satnami aged about 19 years
R/o. Mithumuda Rajiv Nagar Raigarh District Raigarh, M.P.

---- Appellant

Versus

State of Madhya Pradesh through P.S. Kotwali, District
Raigarh, M.P.

---- Respondent

For Applicant	: Shri Rajendra Tripathi, Advocate
For State/ Respondent	: Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

FIR (Ex. P-2) lodged by the minor prosecutrix (PW-2) on 28.08.1995 alleges that in the noon time on 24.08.1995 when she was taking rest in her house after taking lunch, the accused/appellant who was residing in the neighborhood had come there by jumping over the boundary wall and insisted for sexual intercourse. When the prosecutrix did not fall prey to the say of the accused/appellant, he took out the knife and putting her under the threat of life gagged her mouth with the piece of cloth, threw her down and committed forcible sexual intercourse with her. According to the prosecutrix, at the relevant time she was all alone in her house. Out of fear she did not disclosed the incident to her parents for about 3 days and it is when her mother asked the reason of her sadness, she narrated the act of the accused/appellant to her who in turn informed the same to her

husband (the father of the prosecutrix). Thereafter, on the basis of the said report, an offence under Section 376 IPC was registered against the accused/appellant, prosecutrix was got medically examined and after completion of investigation charge-sheet was filed against him under the said section followed by framing of charge accordingly. Medical examination report of the prosecutrix is Ex. P-4 and that of the radiologist is Ex. P-13. Class 4 mark-sheet of the prosecutrix was also seized under Ex. P-15 which mentions her date of birth as 03.06.1981.

2. On the basis of material produced by the prosecution including the evidence of the witnesses so examined, learned Court below vide judgment impugned dated 31.08.1999 passed in Sessions Trial No. 02/96 held the accused/appellant guilty under Section 376 IPC and imposed the sentence of 10 years RI coupled with 1000/- as fine, plus default stipulation.

3. Counsel for the accused/appellant submits that though the prosecution has not been able to prove that on the date of incident the prosecutrix was below 16 years of age, yet the accused/appellant has been convicted under Section 376 IPC which is bad in law. He further submits that if overall conduct of the prosecutrix is seen where she chose to remain silent for 3-4 days and did not inform the incident even to her parents itself makes it clear that she was consenting party. He further submits that even the medical evidence does not lay support to the case of the prosecution. Even the four days delay in lodgment of the report has not been satisfactorily explained by the prosecution.

4. On the other hand, counsel for the respondent/State submits that there is sufficient evidence to demonstrate that on

the date of incident the accused/appellant taking advantage of loneliness and helplessness of the minor prosecutrix has committed such a heinous offence of subjecting her to forcible sexual intercourse and, therefore, the findings recorded by the Court below do not require any interference with the well reasoned judgment. He further submits that almost all the witnesses have supported the case of the prosecution in letter and spirit which can not be discarded at any cost.

5. First of all, before dealing with the merit aspect of the case, it appears apposite for this Court to ascertain whether on the date of incident prosecutrix was 16 years of age or not. Ex. P-15 - the mark-sheet of the prosecutrix mentions the date of birth of the prosecutrix as 03.06.1981. The witness PW-12 who at the relevant time was posted as teacher in the school where the prosecutrix was studying has clearly stated that the mark-sheet of the prosecutrix Ex. P-15 was issued by him which was entered in the school register on the information given by her father PW-4. He has stated that the mark-sheet issued by him mentions the date of birth of the prosecutrix as 03.06.1981. Even PW-4 - the father of the prosecutrix has admitted the fact that when the prosecutrix was 6 years old, he had got her admitted in the school. As regards the incident, he has reiterated the same in the manner the prosecutrix had disclosed to him which is consistent with the evidence of prosecutrix herself. Report of Radiologist (Ex. P-13) categorically states that at the relevant time the prosecutrix was below 16 years of age. PW-5 - the doctor who medically examined the prosecutrix has also opined that she was subjected to sexual intercourse. Thus taking into consideration the date of birth of the prosecutrix as 03.06.1981, and the fact that at the

relevant time the prosecutrix was studying in class 5 and even assuming that she had been admitted in the school at the age of 6 as has been stated by her father, it can safely be said that on the date of incident i.e. 24.08.1995 she was below 16 years of age. Even the ossification report in Ex. P-13 states the prosecutrix to be below 16 years of age at the relevant time. Now let us turn towards merit of the case whether the incident of rape took place or not. Apart from the categorical disclosure by the prosecutrix herself, her mother (PW-3) has also stated that when her daughter used to remain sad, 2-3 days thereafter she asked her about the reason thereof, on which she disclosed entire incident to her describing the manner in which she was subjected to sexual intercourse by the accused/appellant by gagging her mouth and putting her under fear of death in case she disclosed the incident to anyone. Seizure of *salwar* and underwear of the prosecutrix made under Ex. P-3 has also been proved by PW-4. Un-exhibited FSL report also says that *salwar* and underwear of the prosecutrix were stained with blood. As regards the defence taken by the accused/appellant that as his elder brother had ousted the sister of the prosecutrix (who was married to him) from his house, he has been falsely implicated in the case, does not seem to have any substance in view of the specific narration of the incident by the prosecutrix describing the manner in which the accused/appellant came to her house by jumping over the wall and committed rape on her by inserting a piece of cloth in her mouth and by pointing a knife at her. Likewise, defence taken by the accused regarding prosecutrix being a consenting party to the commission of rape by the accused, also has no substance keeping in mind the fact that on the date of incident she being

below 16 years of age was not competent to give consent for the same. All this apart, the investigating officer has also fully supported the case of the prosecution. As far as delay in lodging the report is concerned, considering the statement of the prosecutrix that she took four days time in disclosing the incident to her mother which led to lodging of report to the police on account of being in fear, it can not be said to be fatal to the case of the prosecution particularly when she remained fully consistent in narrating the ordeal she was subjected to. In addition to this, it has been observed by the Apex Court time and again that in rape cases there are so many factors which make the victim take time in so doing, such as deliberation in the family and thoughtfulness about the long future lying ahead of the victim. For this reason also, the delay in lodging the report does not benefit the accused in any manner whatsoever.

6. In view of what has been discussed above, this Court is of the opinion that conviction of the accused/appellant under Section 376 IPC is based on proper appreciation of the evidence of the witnesses and being so, no interference with the same is called for in this appeal.

7. In the result, the appeal being without any substance is liable to be and is hereby dismissed. Appellant appears to be on bail as of now, therefore, let he be arrested and sent back to the prison for undergoing the remaining sentence imposed on him.

Sd/-

(Vimla Singh Kapoor)

Judge