

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 977 of 2008**

Jailu Ram @ Jasraj @ Jailal Markam S/o Suklal Gond, aged about 23 years R/o Kudai, Police Station Raigda, District Navrangpur, Orrisa, At present residing at Village Gedra, Police Station Nagri, District Dhamtari (C.G.)

----Appellant**Versus**

State of Chhattisgarh, through the District Magistrate Dhamtari, District Dhamtari (C.G.)

---- Respondent

For Appellant	:	Mr. Lokesh Kumar Singh, Advocate
For Respondent	:	Mr. Ajay Kumbrani, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****13/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 23/09/2008 passed in Sessions Trial No. 01/2008 by the Additional Sessions Judge, Dhamtari whereby the Appellant has been convicted under Sections 366 and 376/511 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 500/- & RI for 7 years and to pay fine of Rs. 1000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix was about 5 years at the relevant time. On 05/10/2007 at about 7 O'clock in the morning, the Prosecutrix was in her house with her parents and younger brother. All were watching TV. At that time, the Appellant came there and started to watch TV. Thereafter, he took the Prosecutrix in his lap. After some time when father of the Prosecutrix went to village and mother of the

Prosecutrix had gone inside, then the Appellant took the Prosecutrix on a bi-cycle and had taken her towards forest. There, he put off the underwear and full paint of the Prosecutrix. He inserted his penis and thereby committed rape with her. The Prosecutrix was crying. The Appellant left the Prosecutrix in the house of Malti Bai. On 06/10/2007, the Prosecutrix disclosed the incident to her mother. Mother of the Prosecutrix saw that there was swelling and injury in the private part of the Prosecutrix. On 07/10/2007, the matter was reported. The Prosecutrix was medically examined by Dr. Aasha Tripathi (PW17). Her report is Ex.P-12. The Appellant was also medically examined by Dr. Aarush Kumar Netam (PW12). His report is Ex.P-9. Statement of the Prosecutrix and other witnesses have been recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges under Section 366, 363 & 376 of the IPC. As many as 22 prosecution witnesses have been examined. One defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. There are material contradiction and omission occurred in the statements of the prosecution witnesses. Moreover, FIR has been lodged after 3 days and no explanation has been offered. Hence, the story is concocted, fabricated and false. The

prosecution has failed to prove its case beyond all reasonable doubt.

5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
6. There is no dispute on the point that at the time of incident, the age of the Prosecutrix was about 5 years. In her Court statement, the Prosecutrix (PW3) has categorically stated about the incident and she remained firm during her cross-examination. From the statement of her father Mahesh Kumar (PW1) and her mother Saraswati Bai (PW4), it is well established that before the incident when the Prosecutrix was watching TV with them, the Appellant came there and also watched TV for some time. Thereafter, the Appellant had taken the Prosecutrix with him. Malti Bai (PW5) also supported the case of the prosecution and stated that the Appellant had left the Prosecutrix at her house. Gyan Das Panika (PW11) stated that after the incident, he visited the spot along with the Prosecutrix and police officials. He stated that the Prosecutrix shown spot to them and told that the Appellant had brought her there. Dr. Smt. Aasha Tripathi (PW17) examined the Prosecutrix on 08/10/2007 and found redness on her private part. She stated that the Prosecutrix was in pain. She further stated that hymen was not ruptured, but there was pain. As opined by this witness, there was possibility of partial penetration.
7. Considering the entire evidence available on record, it is well established that the Appellant had abducted the Prosecutrix and tried to commit sexual intercourse with her, therefore, the finding of the trial Court in this regard is in accordance with law. Thus, the conviction and sentence imposed upon the Appellant by the Trial Court is affirmed.
8. Accordingly, the appeal is dismissed.

9. Since, the Appellant has already been released after completing the entire jail sentence, therefore, no further action is required.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul