

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 510 of 2018**

- Gurudas Mahant @ Guru S/o Ghasidas Mahant, Aged About 19 Years, R/o Village Barmuda, Police Station Kotraroad, District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh through Police of Police Station Kotraroad, District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

--- Respondent

For Appellant : Shri Govind Dewangan, Advocate.

For Respondent/State: Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****02/05/2019**

1. This appeal has been preferred against judgment dated 31-10-2015 passed in Special Session Case No.04/2015 by the Additional Sessions Judge (F.T.C.), Raigarh, District Raigarh, C.G. convicting the appellant under Section 457, 323 and 376/511 of the IPC and sentencing him with R.I. for 3 years, R.I. for 1 month and R.I. for 7 years along with fine of Rs.500/-, Rs.100/- and Rs.2000/- respectively with default stipulations and direction that all the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that in the intervening night of 12th and 13th of November, 2014 the minor prosecutrix (PW-2) got up in the night for urination. At that time the appellant who had already committed lurking house-trespass and was hiding in the courtyard, caught hold of the prosecutrix with intent to outrage her modesty and attempted to rape her.

The prosecutrix raised alarm, hearing which her father and grand-father came to the spot and intervened. The FIR, Ex.-P/3 was lodged. Investigation was taken up and on completion of the investigation charge sheet was filed against the appellant before the concerned Court.

3. The Court below charged the appellant under Section 457, 354, 353, 376/511 of the IPC and under Section 8 of Protection of Children from Sexual Offences Act, 2012, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that the appellant has been erroneously convicted by the trial Court without there being any evidence of prosecution beyond reasonable doubt. The evidence of the prosecutrix (PW-2) is not reliable. Similarly other connected witnesses are also not trustworthy. Therefore, the appellant was entitled for acquittal. In the alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charges, then his sentence of imprisonment may be reduced to the period already undergone

by him in jail.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecutrix (PW-2) has made clear statement against the appellant regarding offences committed by him and Loknath Patel (PW-5) is father of the prosecutrix who has witnessed the incident and stated in support before the Court. Premshankar Patel (PW-3) is grand-father of the prosecutrix who immediately arrived the spot and was informed about the incident. Similar is the statement of Babu Lal Patel (PW-4) who has partially supported the prosecution case. Therefore, it is a clear case of conviction. There is no any infirmity in the impugned judgment. Hence, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt?
10. The prosecutrix (PW-2) has stated, that on the date and time of the incident when she got up for the purpose of urination and went to the courtyard, she found that the appellant was already hiding in the courtyard, who caught hold of her and then he by force pinned her down to the ground and was making attempt to rape her. She has stated that she raised alarm, hearing which her

father came to the spot, who caught hold of the appellant and then on his calling her grand-father also came to the spot and saw the appellant in the clutches of Loknath Patel (PW-5). She has stated that on 2 to 3 earlier occasions the appellant had teased her. She has stated about lodging written complaint (Ex.-P/2), on which basis the FIR (Ex.-P/3) has been lodged. In cross-examination she has remained firm on this statement and there is no such statement made by her so as to hold that she has contradicted her statement. She has denied all the adverse suggestions given in defence. Therefore, her statement in examination-in-chief has remained totally unrebutted.

11. Loknath Patel (PW-5) is father of the prosecutrix. He has stated that on hearing cry of his daughter he came to the courtyard and saw that his daughter, the prosecutrix was lying on floor and the appellant was making attempt to rape her. He found that the appellant was not wearing pant, then he caught hold of the appellant. The appellant was bound and the witnesses were called and then the FIR was lodged in this case. In cross-examination his statement has remained unrebutted and he has denied all the suggestions given in defence.
12. Premshankar Patel (PW-3) is grand-father of the prosecutrix who came to the spot and saw that the appellant in the clutches of his son and then he informed the police.
13. Babu Lal Patel (PW-4) came to the house of the prosecutrix on call and found that the appellant was present there in naked

condition and then Loknath Patel (PW-5) informed him about the incident.

14. On close scrutiny of the evidence of these witnesses of prosecution who have witnessed and who are the person having knowledge of the incident, I am of this opinion that the statement given by these witnesses is fully reliable and trustworthy without there being any reason to believe that they may be making false statement against the appellant. There is no need to examine other witnesses of investigation procedures. Therefore, after due consideration, I am of this view that the Court below has not committed any error in convicting the appellant for the offences as aforementioned. Therefore, conviction against the appellant is without any error and needs no intervention.
15. Considered on the prayer made for reduction in sentence. The appellant himself was of age about 19 years on the date of incident and he has undergone about 4 years and 5 months in jail, maximum punishment has been imposed upon him for offence under Section 376/511 of the IPC. In case of attempt to commit an offence the punishment which can be imposed upon any accused person shall be half of the sentence which may be imposed for commission of the offence itself. Looking to the period of sentence that the appellant has already undergone, I am of this view that this much of detention will serve the purpose of punishing the appellant in this case. Therefore, I feel inclined to allow this prayer.

16. After overall consideration, this appeal is allowed in part. Conviction of the appellant in the impugned judgment is upheld. Jail sentences imposed upon the appellant for offence under Section 457, 323 of the IPC and the fine imposed thereunder are also maintained. However, the sentence of imprisonment imposed upon the appellant for offence under Section 376/511 of the IPC is modified and now the appellant is ordered to be sentenced with imprisonment of the period of detention already undergone by him in jail along with fine of Rs.2,000/-, with direction of concurrent running of all the jail sentences. In case of non-payment of the fine amount imposed upon the appellant by this Court, the appellant shall have to undergo additional R.I. for 4 months.

Sd/-
(Rajendra Chandra Singh Samant)
Judge