

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25-1-2019

Delivered on 8-3-2019

Criminal Appeal No. 1162 of 2012

- Jalesh Singh Gond, aged 25 years, son of Shri Bhujbal Gond, r/o. of village Mahchandih, PS Pendra, Dist. Bilapur (CG).

---- Appellant**Versus**

The State of Chhattisgarh Through Police Station Pendra,
Dist. Bilaspur (CG).

---- Respondent

For the appellant : Mr. D.K. Vihwakarma, Advocate

For the respondent/State : Mr. V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 19-8-2010 passed by the Additional Sessions Judge (FTC), Pendraroad, Distt. Bilaspur (CG) in Sessions Trial No. 35 of 2009 wherein the said Court convicted the appellant for the commission of offence under Sections 363 and 376 of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- and RI for ten years and to pay fine of Rs.10,000/- with default stipulations.

2. In the present case, prosecutrix is about 6 years. On 16-3-2009 at about 3.00 pm prosecutrix had gone somewhere to whom her grand-mother Dhaneshwari searched but she could-not find her. After sometime one person came to her house with prosecutrix and told that some girls were taking her towards Fulwari Bandha. Under-wear of the prosecutrix was stained with blood and Dhanehwari saw her private part and she felt some unnatural occurred. During investigation it is found that appellant committed rape with the said prosecutrix. The matter was reported to the Police Station and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- I) Version of Deepak (PW/3) regarding last seen is not reliable, therefore, finding on the basis of the said evidence is without substance.
- II) The trial Court has erred in gross in not drawing adverse presumption against the prosecution for not producing prosecutrix in the witness box for examination.
- lii) The trial Court has erred in not appreciating the plea of alibi and impotency of the appellant,

therefore, same is not liable to be sustained.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. PW/1 Balkunwar is mother of the victim (prosecutrix). As per version of this witness, she was sleeping with prosecutrix at about 2.00 pm and when she woke up at about 3.30 pm she did not find the prosecutrix in her house that is why she made searching for her. At about 4.00 pm., one person namely Deepak brought the prosecutrix who was unconscious and she saw blood-stained on underwear of the prosecutrix. She again saw that there was bleeding from her private part. Dr. Lakda (PW/10) examined the victim and found laceration and redness all around vagina. Laceration 1 cm x ½ cm on left side vagina wall there was bleeding on touch. As per opinion of this witness, the injury may be sustained by male sex organ and duration is within 24 hours from examination.

7. Looking to the statement of both the witnesses, it is established that minor prosecutrix aged six years was raped.

PW/3 Deepak Kumar deposed before the trial Court that he saw the appellant taking the minor prosecutrix at about 2.30 pm on the date of incident and he identified the appellant as culprit. Version of this witness is unshaken during cross-examination but nothing could be elicited in favour of defence and his version remained unshaken. There is nothing on record to say that this witness has any grudge against the appellant to rope in false charge whereas there is evidence against the appellant that he had taken the minor prosecutrix at the time which is the time of incident. He was under obligation to explain as to why he had taken the minor prosecutrix without consent of her lawful guardian. His version is plain denial which is merit-less.

8. On over-all assessment of the entire evidence, it is established that the appellant enticed the minor prosecutrix without consent of her guardian and looking to the cogent evidence against him, it is established that he committed rape on her which is punishable under Section 363 and 376 (2) of IPC for which the trial Court convicted him. Looking to the evidence, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant is hereby affirmed. The trial Court awarded minimum sentence for offence under Section 376 (2) of IPC and less than minimum cannot be awarded. Sentence part is also not liable to be interfered.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further arrest for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju