

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 619 of 2018

- Ramdas Soni S/o Jogiram Soni Aged About 45 Years By Caste Ghasiya, R/o Village Udela, Police Station Basna, District Mahasamund Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Basna, District Mahasamund Chhattisgarh.

---- Respondent

For Appellant	:-	Mr. Mirza Kaiser Baeg, Advocate.
For Respondent-State	:-	Ms. Fouzia Mirza, Additional A.G.

Hon'ble Shri Prashant Kumar MishraHon'ble Shri Gautam Chourdiya, JJ.Order on BoardByPrashant Kumar Mishra, J10/12/2019

1. This appeal would challenge the appellant's conviction under Section 376 of the IPC and sentence of life imprisonment imposed on the appellant for committing forcible sexual intercourse with his daughter, aged about 14 years.

2. As per the FIR, Exhibit P/1, lodged by the prosecutrix herself at 18:40 hours on 04.10.2005, her father, the present appellant committed forcible sexual intercourse on a Sunday and thereafter the next Friday, about 1 and ½ month back from the date of lodging FIR. After the first incident she disclosed the matter to her step-mother. Her step-mother, in turn, informed the incident to her aunt (fufu) Amrit Bai. On the next Friday when her step-mother had gone to attend work she was again subjected to sexual intercourse which was seen by her brother-Sanjay (PW-6). Her father/accused criminally intimidated her brother-Sanjay on which he went back to village Banipali. On the same evening prosecutrix again informed the incident to her step-mother and after 3-4 days she was sent to her elder sister's (Kheer Kumari) house. Appellant and his wife-Ramula Bai reached village Banipali and tried to persuade the prosecutrix to live with them on which the prosecutrix and her elder sister PW-2 (Kheer Kumari) denied to accompany the appellant due to which the appellant slapped the prosecutrix. The Panchayat meeting was convened in which the appellant admitted his guilt but still insisted that he will take the prosecutrix with him.
3. The prosecutrix was sent for medical examination which was conducted by PW-8, Dr. Jaishree Sahu, who submitted her

report Exhibit P/7 finding the hymen torn on left side. In the concluding para of the opinion she stated that “in my opinion sexual assault has taken. Hymen loss left side completely”. In her ossification test conducted by PW-10, Dr. Alka Pardal. She was found to be aged about 14 years. The report of the Radiologist has been proved vide Exhibit P-9.

4. After recording case diary statement of witnesses charge-sheet was filed and on the basis of statement of 11 prosecution witnesses and two defence witnesses the trial Court has convicted the appellant.
5. We have heard learned counsel for the parties and perused the record.
6. PW-1 is the prosecutrix whereas PW-2, Kheer Kumari, is her elder sister and PW-3, Pardeshi, is the husband of Kheer Kumari, thus, he is brother-in-law (Jija) of the prosecutrix. PW-4, Lingraj, is a villager, who was present in Panchayat meeting whereas PW-5, Damaru, is the village Kotwar. PW-6, Sanjay, is the elder brother of the prosecutrix, PW-7, Suresh Samant, is the Patwari who has prepared the map. PW-8, Dr. Jaishree Sahu, has conducted the medical examination of the prosecutrix whereas PW-10, Smt. Alka Pardal, is the Radiologist. PW-9, G.N. Baghel, and PW-11, Ram Niwas Saxena, are the Investigating Officers. There

are two defence witnesses examined by the accused namely DW-1, Amrit Bai (Fufu), and DW-2, Ramula Bai, appellant's wife.

7. The deposition of the witnesses would reveal that the prosecutrix informed about the incident to her step-mother immediately after the first incident which happened on Sunday. When she was again subjected to forcible sexual intercourse her brother PW-6, Sanjay, was present in the house and has witnessed the incident. Both, the prosecutrix and PW-6, Sanjay, have stated about the incident giving details as to how the appellant prevailed upon and dominated her own daughter to fulfill his sexual lust.
8. Although, DW-2, Ramula Bai, is not supporting the prosecution as she denies that the prosecutrix has ever informed about the incident to her but all other witnesses including independent witnesses PW-4, Lingraj, and PW-5, Damru, village Kotwar, are supporting the prosecution in unequivocal term. These two witnesses were present during the Panchayat meeting where the appellant not only admitted his guilt but insisted that he will take his daughter with him. Such was the magnitude of his infatuation or sexual attraction against his own daughter that despite being admonished and persuaded by the members of the Panchayat he still wanted to have the possession of his

daughter.

9. As the statement of prosecutrix, her elder sister, Kheer Kumari (PW-2), and that of Lingraj, PW-2, and Damru, PW-5, would suggest, when the appellant and DW-2, Ramula Bai, insisted that the prosecutrix and her brother, PW-6, Sanjay, should return to their house, they not only refused but threatened that if they are pressurized to reside with their parents she/prosecutrix would commit suicide by consuming poison. DW-2, Ramula Bai, has raised a defence that appellant is not capable of performing sexual intercourse but the same is proved false in view of the medical experts opinion vide Exhibit P-15, wherein the appellant has been found potent to perform sexual intercourse. Appellant has also raised this defence in his accused's statement under Section 313 of the Cr.P.C., but the same is again found false and untrustworthy in view of his medical report.

10. Considering the enormity of evidence against the appellant the present is an open and shut case where the appellant has committed rape with his own daughter, aged about 14 years.

11. At the time of incident, the appellant was 45 years of age. His present age would be about 59 years. He is in jail since

06.10.2005. Thus, he has already remained in jail more than 14 years. Considering the entire facts situation of the case, it appears that the sentence imposed on the appellant deserves to be reduced appropriately, therefore, we reduce the sentence from life imprisonment to imprisonment for 20 years without any remission.

12. Accordingly, **the appeal is allowed in part.** While maintaining his conviction under Section 376 of the IPC the sentence is reduced from life imprisonment to Rigorous Imprisonment for 20 years without remission. Rest of the sentence shall remain intact.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit