

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 643 of 2011

- Hemlal Sahu aged about 30 years, S/o Hiranman Sahu, R/o Village Bhatheli, P.S. Bhakhara, Distt.-Dhamtari, C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Bhakhara, District Dhamtari (C.G.)

---- Respondent

For Appellant	:	None.
For Respondent	:	Mr. KK Dewangan, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

22/07/2019

1. By the impugned judgment dated 23/07/2011 passed in S.T. No. 17/2011 by the learned District Session's Judge, Dhamtari, District Dhamtari (C.G.), the Appellant has been convicted for offence punishable under Sections 376 & 342 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 10,000/-, rigorous imprisonment for 3 months and to pay fine of Rs. 500/- respectively, with default stipulations. All the sentences to run concurrently.
2. In this case, the age of the prosecutrix at the relevant time is

about 18 years. As per prosecution story, she was mentally disordered from her childhood. On 24.02.2019 at around 02:00 PM, mother of the prosecutrix went to her new house for some domestic work along with the prosecutrix. When she working in her house, the prosecutrix was with some children outside the house and when she returned, she found that prosecutrix was not there. On being asked by the children, she came to know that the prosecutrix is in Anita Sahu's house. When she went to Anita's house, her door was locked from inside. After calling by the name of Anita, the Appellant and her daughter/prosecutrix came out. Thereafter, on the way, her daughter/prosecutrix disclosed the fact that the Appellant has forcibly committed sexual intercourse with her. Mother of the prosecutrix again went to Anita's house, but till then, the Appellant was fled away from there. Father of the prosecutrix was out of station, therefore, the report was not lodged on the same day and when he came back, the matter was reported on 27.02.2011. Thereafter, statements of witnesses under Section 161 of Cr.P.C. have been recorded. After completion of investigation, charge-sheet has been filed. Trial Court has framed the charges under Section 376 & 342 of the IPC. To prove the guilt of the Appellant, the prosecution has examined as many as 10 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C. was recorded, wherein he has pleaded their innocence and false implication in the matter.

3. Trial Court has convicted and sentenced the Appellant for the offence as mentioned in paragraph one of this judgment. Hence, this appeal.
4. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Raipur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and already released from jail on 11.08.2018.
5. Since no one appears for the Appellants today, I decide this appeal on merits.
6. I have heard Learned Counsel appearing for the State and perused the record to assess the correctness of the impugned judgment of conviction.
7. In this case, prosecutrix of the case was present before the Trial Court on 23.05.2011 from the observation made by the presiding Judge, it is clear that due to mental condition of the prosecutrix, her statement was not recorded. Dr. Seema Singh (PW-4) who examined the prosecutrix also categorically stated that prosecutrix was mentally disordered. Dr. Vinod Pandey (PW-10) has also categorically stated that the prosecutrix was suffering from 80% of disabilities, she was unable to hear and understand things. From the above, it is clear that the prosecutrix was mentally disordered girl and due to that recording her statement was not possible.
8. Mother of the prosecutrix Chandrika Bai (PW-1) has categorically

stated that on the date of incident when she went for bringing water along with the prosecutrix at that time when she was in field, the prosecutrix was standing near boring along with some children, when she returned, she found that prosecutrix was not there, after asking the children, they told her that prosecutrix is in Anita's house. When she went to Anita's house, her door was locked from inside after calling by the name of Anita, the Appellant and her daughter/prosecutrix came out. Thereafter, on the way, her daughter/prosecutrix disclosed the fact that the Appellant has forcibly committed sexual intercourse with her. Thereafter, she lodged a report. The prosecutrix was medically examined by Dr. Seema Singh (PW-4), she opined the fact that there was redness on her vagina and there was also pain on touching. As opined by this witness, there was rape committed by the prosecutrix. Satyanarayan Sahu (PW-3), father of the prosecutrix also stated that when he returned to his home, he came to know about the incident. Thereafter, the Appellant in front of villagers also admitted the above fact that he committed rape with her daughter/prosecutrix. Neel Kanth Sahu (PW-8) also stated that father of the Appellant felt guilty and apologizing with the father of the prosecutrix.

9. From the above evidence available on record, it is clear that on the date of incident, the Appellant had taken the prosecutrix with him, who was a mentally disordered girl and committed the above alleged offence. There is sufficient evidence available on record

against the Appellant. Thus, the learned trial Court has rightly convicted the Appellant.

10. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**