

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-11-2019

Delivered on 17-12-2019

CRA No. 780 of 2017

- Jagbandhan Gond S/o Ramdhan Gond Aged About 45 Years R/o Awantikapur, Police Station Chandni, District - Surajpur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through- Police Station Chandni, District - Surajpur, Chhattisgarh, Chhattisgarh

---- Respondent

 For Appellant : Mr. Utkal Pradhan, Advocate

For respondent/State : Mr. Afroj Khan, P.L..

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 6-4-2015 passed by the First Additional Sessions Judge, Surajpur, CG, in Sessions Trial No. 75 of 2014 wherein the said Court has convicted the appellant for commission of offence under Sections 450, 376 (2) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.100, RI for ten years and to pay fine of Rs.100/- and RI for seven years and fine of Rs.100/-

respectively with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, on 20-5-2014 around 1.00 pm appellant went to the house of the prosecutrix where her brothers namely Rupnarayan (PW/4) and Chhotu (Sandeep) (PW/3) were present and the parents of the prosecutrix went to forest area. It is alleged that brothers of the prosecutrix were kicked out from the house by the appellant and thereafter appellant removed clothes of the prosecutrix and raped on her. Prosecutrix informed about the incident to her parents and thereafter FIR was lodged against the appellant. The matter was investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Statement of the prosecution witnesses is contradictory in nature and same is not supported by medical evidence, therefore, finding of the trial court is not sustainable.
- ii) The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

Reliance has been placed in the matter of

Rajesh Patel vs. State of Jharkhand

**reported in (2013) 3 SCC 791,
Rameshwar vs. The State of Rajasthan,
reported in (1952) AIR (SC) 54 and State
of UP vs. Punni and others, reported in
(2008) 11 SCC 153**

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6.. PW/6 Dr. Sarita Singh examined the x-ray of the prosecutrix which is taken of right wrist, right elbow bone, waist and after examining she recorded age of prosecutrix to be 14 years. Version of this witness is unrebutted during cross examination. There is no other expert's opinion contrary to other opinion, therefore, it is proved that age of the prosecutrix was 14 years. As per definition of child under the Act, 2012, any person below 18 years of age. In the present case, prosecutrix is below the age of 18 years and she is a child as per definition of the Act, 2012.

7.. Prosecutrix (PW/1) deposed before the trial court that on the date of incident she and her brothers Rupnarayan and Sunder

were present in the house and at the same time appellant entered into her house and committed sexual intercourse with her. Before that she ousted her brothers and children. Version of this witness is supported by version of PW/3 Chhotu (Sunder) and Rupnarayan (PW/4) who were present when the appellant entered into their house and PW/3 Chhotu deposed that appellant removed garments of prosecutrix and committed act against her. Rupnarayan (PW/4) also supported version of prosecution and he was present at the time of entrance of the appellant in their house. It is further supported by version of Nandlal PW/2) who is father of the prosecutrix to whom prosecutrix narrated the incident and thereafter report was lodged. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Version of this witness is further supported by version of Dr. Rasim Kumar (PW/5) who examined the prosecutrix on 26-5-2014 and recorded finding that she has been subjected to intercourse. Version of this witness is also unrebutted during cross examination and there is no other expert's opinion contrary to the opinion of this expert.

8.. From the evidence, it is clearly established that appellant entered into the house of the prosecutrix for commission of rape and he committed rape on child. Commission of offence on child aged below 18 years comes under definition of the Act, 2012,

then the act of the appellant falls within mischief of Section 376(2) (i) of the Act, 1860.

9.. After re-assessing the entire evidence, it cannot be said that statement of the prosecutrix and other witnesses is not inspiring confidence. When statement of the prosecutrix inspires confidence, no corroboration is required, but in the present case, there is ample corroboration to the statement of the prosecutrix.. All the eye-witnesses and medical expert are supporting the version of prosecutrix, therefore, argument advanced on behalf of the appellant is not acceptable and the case laws cited by learned counsel for the appellant is clearly distinguishable from the facts of the present case.

10.. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellants falls within mischief of Sections 450, 376(2) of the IPC and Section 4 of the Act, 2012 for which the trial Court has convicted the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of rape under Section 376 (2)(i) of IPC which is minimum and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

12. 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 order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju