

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 670 of 2013**

- Rupendra Kumar Sahu S/o Shri Visheshar Sahu, aged about 20 Years
R/o Village Jaroud, PS Arang, Distt. Raipur, Civil & Revenue District
Raipur C.G.

---Appellant

Versus

- State of Chhattisgarh, Through Station House Officer, PS Arang, Distt.
Raipur C.G.

---- Respondent

For Appellant	Shri C.K. Sahu, Advocate.
For Respondent/State	Shri S.K. Mishra, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

30/07/2019

1. The appellant would call in question the legality and validity of the judgment of conviction and order of sentence dated 21.06.2013 passed by the Additional Sessions Judge, FTC, Raipur, C.G. in ST No.127/12, whereby he has been convicted and sentenced as under :

Conviction	Sentence
Under Section 302(2)(f) of IPC	Life imprisonment and fine of Rs.1,000/-, in default of payment of fine further R.I. for one month.

2. Allegation against the appellant aged about 20 years is that at

about 9:30 pm on 31.03.2012, he committed forcible sexual intercourse with the prosecutrix aged about 2 ½ years. As per Dehati Nalishi Ex.P-8 lodged by PW-4 Govind Ram Nirmalkar, PW-5 Bisahin Nirmalkar and one Kevra had gone to attend Durga procession along with the prosecutrix at about 8 pm. When the prosecutrix started crying, they enquired from the accused as to whether he is proceeding towards his house and when he replied in affirmative, he was requested to drop the prosecutrix in their house. The appellant dropped the prosecutrix at her house at about 10 pm. After some time Bisahin Nirmalkar returned to her house and requested the prosecutrix's mother to send the prosecutrix to sleep with her. When they went to pick-up the prosecutrix, who was sleeping on a cot, they found that she was bleeding from her private parts and blood had also spilled over the bed sheet. PW-5 Bisahin Nirmalkar and other family members immediately rushed to the appellant's house to enquire as to the reason for the prosecutrix suffering bleeding from her private parts. The appellant refused to have committed any offence with the prosecutrix but the family members were not satisfied, therefore, on the advise of villagers, the prosecutrix was taken to hospital at Arang and thereafter to Medical College Hospital, Raipur. The prosecutrix was medically examined by PW-11 Dr. Chandra Shekhar Shrivastava, who found that hymen of the prosecutrix was torn and lateral vaginal wall on lower side at level of inter-coitus congested. This examination happened in the early hours at about 4:30 am on 01.04.2012. No active

bleeding was found and the Doctor could not accord any definite opinion regarding sexual assault. The report has been filed as Ex.P-21. During investigation memorandum statement of the accused was recorded on 01.04.2012 vide Ex.P-5 consequent to which the underwear of the prosecutrix was recovered from the agricultural field of Khelwan Vishwakarma vide Ex.P-4. The underwear of the prosecutrix was sent to FSL for examination, however, the report vide Ex.P-22 is negative for presence of blood or spermatozoa over the underwear of the prosecutrix but it is positive in respect of vaginal swab and vaginal slides.

3. Based on the medical opinion of Doctor and the oral evidence, the charge sheet was filed against the appellant.
4. Learned counsel for the appellant would argue that there is absolutely no evidence that the appellant has committed any offence with the prosecutrix. He would submit that the medical opinion is not against the appellant and further, there is no witness to the alleged incident. Therefore, the appellant deserves to be acquitted of the charge. Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the offence under Section 376(2)(f) of IPC, considering the fact that at the time of incident, the appellant was only 20 years of age, the sentence of life imprisonment imposed by the Trial Court being harsh may be reduced suitably.
5. Learned counsel for the State would support the impugned judgment.
6. Heard learned counsel for the parties and perused the material

available on record.

7. Case of the prosecution is based on evidence of PW-5 Bisahin Nirmalkar, PW-7 Smt. Geeta Nirmalkar, PW-4 Govind Ram Nirmalkar and PW-11 Dr. Chandra Shekhar Shrivastava.
8. PW-5 Bisahin Nirmalkar and PW-7 Smt. Geeta Nirmalkar are two important witnesses for the reason that PW-5 Bisahin Nirmalkar had handed over the girl to the appellant for dropping her at her residence and PW-7 Smt. Geeta Nirmalkar received the victim at the residence when she was dropped by the appellant at about 10 pm. PW-5 Bisahin Nirmalkar would categorically state that when the victim started crying at the place of Durga celebration they requested the appellant to drop her at her residence. The appellant took the prosecutrix with him and thereafter left her in the house at about 10 pm. At this point of time, the prosecutrix was weeping, therefore, PW-7 Smt. Geeta Nirmalkar enquired from the appellant as to why she is weeping to which the appellant replied that since she brought her on the front bar of the bicycle she might have sustained some rubbings. PW-7 Smt. Geeta Nirmalkar says that the prosecutrix went asleep but was awakened after one hour when PW-5 Bisahin Nirmalkar reached the house and requested that the prosecutrix be brought to her room for sleeping with her. When the prosecutrix was lifted she was found to be bleeding from her private parts and similarly blood had spilled over the bed.
9. With this oral evidence, if we examine the evidence of Medical Officer Dr. Chandra Shekhar Shrivastava, it is found that he has

categorically deposed that when he examined the prosecutrix her hymen was ruptured and there was swelling on the lower part of the vagina with slight redness but no bleeding. Thus, the medical opinion was pointing towards the fact that something wrong had happened in the private parts of the prosecutrix. In his memorandum statement, the appellant had stated that he committed rape with the prosecutrix in the agricultural field while he was bringing her on a bicycle to drop her at her home. The underwear of the prosecutrix has been recovered on his disclosure statement. PW-9 Sukhdev is the witness of the memorandum and seizure. Although he has been declared hostile but in para 2 of his statement he admits that one small underwear was recovered in his presence. He also denies the suggestion of the defence counsel that no underwear was recovered from the agricultural field. Thus, the circumstances which nail the appellant is in the form of the statement of PW-5 Bisahin Nirmalkar and PW-7 Smt. Geeta Nirmalkar and the recovery of the underwear of the prosecutrix on the disclosure statement of the appellant. The allegation against the appellant has been corroborated by the medical opinion of Dr. Chandra Shekhar Shrivastava PW-11, who has found the hymen of the prosecutrix ruptured and swelling with redness in her private part. Considering the entirety of the evidence, the prosecution has been able to prove its case against the appellant and the conviction deserves to be is hereby affirmed.

10. We are now required to consider whether the sentence imposed

upon the appellant to undergo life imprisonment is harsh or it deserves to be reduced. At the time of offence, the appellant was only 20 years of age. Therefore, considering that he is a young offender and there was no previous antecedent of his involvement in any other crime, it appears that ends of justice would be served, if the appellant is awarded minimum jail sentence provided for the offence, i.e. RI for 10 years.

11. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant/accused under Section 376(2)(f) of IPC, he is sentenced to undergo R.I. for 10 years. However, the fine amount imposed by the Trial Court and the sentence in default thereof shall remain intact.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Akhilesh