

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 174 of 2015

Raju Chandrakar, S/o. Santosh Chandrakar, Aged About 24 Years,
Occupation - Nigam Employee, R/o. Ghasidas Nagar, Jamul, Bhilai, District
Durg C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station -
Jamul, District Durg (C.G.)

-----Respondent

For Appellant	: Mr. Rishi Rahul Soni, Advocate
For Respondent/State	: Mrs. Madhunisha Singh, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/04/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (F.T.C.), Durg, District – Durg (C.G.) in Sessions Trial No.05/2013 on 08.12.2014, convicting the appellant for the offence under Section 376 (2) (ब) read with Section 511 of the Indian Penal Code and sentencing him to undergo R.I. 10 years and fine of Rs.10,000/- with default stipulation.
2. Facts of the case in brief is this, that on 27.09.2012, when the prosecutrix aged about 12 years came to her house from school, the appellant was present, who sent away the brothers of the

prosecutrix for buying *Guthka*, thereafter, the appellant forcefully disrobed the prosecutrix (P.W.-7) and made an attempt to rape her. According to the prosecutrix (P.W.-7), the appellant had attempted in same manner on earlier occasions also. The prosecutrix (P.W.-7) then informed about the incident to her mother Laxmi (P.W.-8). FIR (Ex.P-11) was lodged by the prosecutrix against the appellant, on that basis offence was registered. Case was investigated by the police and on completion of investigation, charge-sheet was filed against the appellant before the Court concerned.

3. Appellant was charged with offence under Section 376 (2) (f) read with Section 511 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 10 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel for appellant that the appellant has been erroneously convicted for the offence as aforesaid, without there being evidence of prosecution beyond reasonable doubt. All the witnesses in this case are interested witnesses and because the appellant and his wife had dispute,

he has been falsely roped in this case. The statement of the prosecutrix (P.W.-7) is not reliable and trustworthy. There is no eye-witness in this case. Therefore, it is prayed that the appellant be acquitted of the charges. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellant in that case, at least sentence imposed upon the appellant, which appears to be too harsh, may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, therefore, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Prosecutrix (P.W.-7) has stated that on the date of incident, when she came from the school to her home, then her step father the appellant/accused was present in the house. The appellant then sent away her brothers for buying *Guthka* and then after closing the doors of the house, he took off the undergarments of the prosecutrix and then attempted to penetrate in her private part. Soon after the incident, the prosecutrix narrated about the

incident to her aunt, stating that the appellant had made an attempt in this manner earlier also about 4-5 times and her mother had not believed in it, when she narrated to her about the incident. Her narration was believed on the date of incident and then she was brought to police station, where she lodged FIR (Ex.P-11). In cross-examination, she has denied all the adverse suggestion given in defence and her statement has remained unrebutted.

9. Laxmi (P.W.-8) is mother of the prosecutrix has stated that on the date of incident, when she was not present in her house, the appellant after sending away the brothers of the prosecutrix had done the wrong thing with her. She has not explained what was the wrong thing. She then has stated that she believed the narration given by her daughter prosecutrix (P.W.-7) and on that basis, FIR was lodged by the prosecutrix. In cross-examination, she has remained firm on this statement.
10. Nagamma (P.W.-9) is the aunt has made similar statement that she was informed about the incident by the prosecutrix immediately and her statement has also remained unrebutted in cross-examination. Dr. B.N. Vahane (P.W.-4) had examined the prosecutrix and he did not find any injury on her private part. He could not give any opinion vide his report Ex.P-4.
11. Keshav Ram Kurre (P.W.-6) is the Principal of the school, where the prosecutrix was studying. He has given statement on the

basis of the admission register of the school that date of birth of the prosecutrix was 7th July, 2003. The school register is exhibited as Ex.P-9. In cross-examination, he has stated that date of birth of the prosecutrix was informed by her mother and no other question was put to her to challenge the correctness of the date of birth informed to him.

12. On the basis of this evidence regarding date of birth of the prosecutrix, it appears that that age of the prosecutrix was less than 10 years and this has not been specifically challenged by the appellant. FSL report Article – A shows positive report of the presence of spermatozoa on the slide pertaining to the prosecutrix, further supports the prosecution evidence. A.S.I., P.C. Jatav (P.W.-10) has investigated the case.
13. After closely scrutinizing all the evidence of prosecution witnesses, I am of this opinion that the prosecution has proved its case beyond reasonable doubt and the trial Court has not committed any error in convicting the appellant for the offences mentioned herein above.
14. Considered on the alternative prayer made for reduction of sentence. However, the offence under Section 376 (2) (f) of the Indian Penal Code itself is punishable with minimum sentence of 10 years of R.I., but it is a case of attempt to commit the offence of rape, which is governed by Section 511 of the Indian Penal Code, in which the prescribed sentence is half the sentence of

the sentence, which may be imposed on commission of the main offence. It is clear that main offence under Section 376(2) (f) of the Indian Penal Code itself has not been committed and it is an attempt, which is an offence U/s. 511 of the Indian Penal Code, therefore, I feel inclined to allow the prayer made on the basis of the facts and circumstances of the case. Therefore, the conviction of the appellant under Section 376 (2) (f) read with Section 511 of of the Indian Penal Code is maintained. Whereas, the sentence of imprisonment imposed by the trial Court is set-aside, instead of that, the appellant is sentenced with rigorous imprisonment of 7 years with fine of Rs.5,000/- and in absence of payment of fine, the appellant shall further undergo 6 months R.I. more. The period of custody already undergone by him shall be subject to adjustment under Section 428 of Cr.P.C.

15. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge