

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 926 of 2013**

- Dinesh Lakra S/o Nohar Sai Lakra, Aged About 23 Years, R/o Village Budhadand, Barpara, Police Station and Tahsil Patthalgaon, District Jashpur Nagar C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through District Magistrate, District Raigarh C.G., Chhattisgarh

---- Respondent

For Appellant : Shri Govind Dewangan, Advocate.

For Respondent/State: Shri H.S. Ahluwalia, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****30/01/2019**

1. This appeal has been preferred against judgment dated 14-03-2013 passed in Session Trial No.116/2011 by the First Additional Sessions Judge, Raigarh, C.G. convicting the appellant under Section 376 of the IPC and sentencing him with R.I. for 10 years along with fine Rs.1000/- with default stipulation.
2. The case of the prosecution, in brief, is this, that the victim/prosecutrix (PW-5) was of age about 14 years on the date of incident. On 25-06-2011 the appellant came to the house of the prosecutrix (PW-5) and asked for the direction to the house of his friend Prithvipal. The prosecutrix (PW-5) accompanied him to show the way, when they were passing through a jungle the appellant forcefully raped the minor prosecutrix. The prosecutrix (PW-5) came back and informed about this incident to her brother and sister-in-law and Sarpanch of the village. The FIR (Ex.-P/7) was lodged by

the prosecutrix herself on the same day. The case was investigated, in which the prosecutrix was medically examined, statement of witnesses were recorded and after completion of the investigation charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 376 of the IPC, to which the appellant denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that no case is made out against the appellant for his conviction under Section 376 of the IPC as the deposition of the witnesses of the prosecution have not been reliable and trustworthy. Therefore, the appellant was entitled for acquittal. In alternative, it is prayed that if this Court is not convinced to set aside the conviction against the appellant, then his sentence of imprisonment may be reduced to the period already undergone by him in jail.
7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt. Therefore, the appeal may be dismissed.

8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-5) has stated before the Court that she was well acquainted with the appellant. She has stated that on the date of incident the appellant had by force raped her near the river after tying her hands and feet and ran away from the spot. She has stated about lodging FIR (Ex.-P/7). In cross-examination her statement has remained unrebutted and she has denied all the adverse suggestions given in defence. Thus, her statement in favour of the prosecution has remained uncontradicted.
10. Devaru Ram (PW-2) is brother of the prosecutrix who has stated about the narration given by the prosecutrix of the incident and allegation against the appellant. His statement has also remained unrebutted.
11. The statement made by the prosecutrix (PW-5) finds support from the medical evidence of Doctor Smt. Nainsi (PW-3) who examined the prosecutrix on the very next day, i.e., 26-06-2011 and found bleeding in the private parts of the prosecutrix, regarding which she prepared two slides for FSL examination and she was referred for further examination by Gynecologist vide her report Ex.-P/5. Her statement has also remained unrebutted in her cross-examination.
12. Doctor Chandrakala Shrivastava (PW-4) examined the prosecutrix on 27-06-2011 and found bleeding on her private parts and also found that her hymen had tear at place of 3 O'clock which was inflamed and swollen. She has opined vide her report Ex.-P/6 that attempt to rape had been made with the prosecutrix. In cross-

examination she has reiterated that she has found the injuries on the private parts of the prosecutrix on making initial examination and also has denied the adverse suggestions given.

13. Doctor L.K. Soni (PW-7) examined the appellant and found him fit for sexual intercourse vide his report Ex.-P/9 which is unchallenged.
14. Inspector K.P. Jaiswal (PW-8) has conducted the investigation in this case.
15. After close examination and scrutiny of all the evidence present in the record of the trial Court, I am of this opinion that the statement given by the prosecutrix (PW-5) has remained unrebutted and unchallenged, which has been supported with the medical evidence found on her body by the examining doctors. Although Doctor Chandrakala Shrivastava (PW-4) has opined that attempt of rape was made upon the prosecutrix, but this Court has its own view from the basis of the finding recorded by the same witness, this Court does not agree with the opinion given by Doctor Chandrakala Shrivastava (PW-4) that there had been attempt of rape, on the contrary, it is a case of rape committed, because there are symptoms of tearing of hymen and bleeding which shows that the penetration was done and that is a fact which is sufficient to hold that the prosecutrix was subjected to sexual intercourse.
16. The age of the prosecutrix (PW-5) was 14 years at the time of incident and there is no challenge given to this fact in defence by the appellant side. Therefore, on both the counts that the prosecutrix was not willing and consenting party and that she was under age, it is clear case of commission of offence of rape and the

appellant is the person who has committed this offence. Therefore, after overall examination of the evidence present in the record of the trial Court, I am of this opinion that this appeal is without any substance and therefore, the same is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil