

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11-12-2019

Delivered on 17-12-2019

CRA No. 719 of 2013

- Sufal Satnami S/o Jawahar Baghel Aged About 24 Years
R/o Village Kirari, Ps Masturi, Civil, Rev. And Distt. Bilaspur
C.G.

---- Appellant

Versus

- State of Chhattisgarh through Station House Officer, Police
Station Masturi, Distt. Bilaspur C.G.

---- Respondent

For Appellant : Mr. Manoj Kumar Sinha and Shri
Gurudev I Sharan, Advocates.

For respondent/State : Mrs. Shubha Shrivastava, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-6-2013 passed by the Additional Sessions Judge, (FTC), Bilaspur, Session Division Bilaspur, CG in Sessions Trial No. 193 of 2011 wherein the said Court has convicted the appellant for commission of offence under Section 376 (2)(f) of the IPC and sentenced him to undergo rigorous imprisonment for ten years and fine of Rs.15,000/- with default stipulations.

2. As per version of prosecution, prosecutrix is minor child aged about 4 years. She is daughter of Somraj Dhritlahre (PW/8). On 8-10-2011 at village Kirari near Nim Chowk, Goddess Durga statue was sited and meals for minor/girls were distributed. The appellant took prosecutrix from possession of one Aashish and then went towards field. When baby child was not returned, family members started searching for her. In the night at about 8.00 pm., appellant returned with baby child/prosecutrix and handed over baby child to her grand-mother. The baby child informed about rape on her by the appellant. Report was lodged by Somraj (PW/8) as per Ex.P/12. 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 prosecutrix is not available on record.
- ii) The trial court has not evaluated the evidence in proper manner.
- iii) The sentence awarded by the trial court may be reduced to the period already undergone by the appellant.

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/9 Aashish Kumar deposed before the trial court that he was keeping the minor prosecutrix with him in the night at about 6.30 pm. The appellant took her from him and he returned at about 8.00 pm with baby child/prosecutrix. Prosecutrix stated that the appellant removed her garments. PW/8 Somaji deposed that that prosecutrix informed him that the appellant maintained bad relation with her and on enquiry he found injuries on nose, thigh and private part of the prosecutrix. PW/7 Sunita Bai deposed that she inquired about prosecutrix from Ashish who informed her that prosecutrix has been taken by the appellant. At about 8.00 pm appellant returned with prosecutrix and prosecutrix informed her that the appellant committed bad work with her. She found injuries on nose and private part of the prosecutrix. All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Version of these witnesses is supported by version of PW/1 Dr. (Smt) Nilesh Thakur who

examined the prosecutrix on 9-10-2011 at District hospital, Bilaspur and noticed the following injuries.

- I) Bruise present over labia majora and ulva about 1 cm present over hymen at 3.6 and 9 O' clock position.
- ii) Vajina admits 1 finger with fencliness bleeding and dirty brown discharging present over vagina. 2 vaginal slides prepared, sealed and packed and handed over to same P.C for chemical analysis.

Advised to refer to Radiologist for information. Referred to Gynecologist for expert's opinion.

- lii) Doctor opined that all above mentioned injuries are within 24 hours in duration and due to sexual intercourse.

The injuries were caused within 24 hours of the examination and as per opinion of this expert, injuries were caused due to intercourse with her. Version of this expert is unrebutted during cross examination and there is no other expert's opinion contrary

to the opinion of this court. Again, Dr. J.P. Arya (PW/5) examined the appellant and found him capable of intercourse which is also unrebutted. From the evidence of Dr. Smt. Neelesh Thakur (PW/1) age of the prosecutrix was found to be four years.

7. In the present case, date of incident is 8-10-2011 and as per evidence of PW/2 Kisan Lal Biwas, date of birth of the prosecutrix is mentioned in the entry of school register of Saraswati Sisu Mandir as 15-8-2006. From the evidence of school register and opinion of expert, it is clear that prosecutrix was aged 4 years and two months. Looking to the ample evidence against the appellant, examination of prosecutrix who is a child is not compulsory in the facts and circumstances of the case. The evidence adduced by the prosecution which is of direct and expert's opinion irresistibly confirmed rape on prosecutrix by the appellant, argument advanced on behalf of the appellant is not sustainable.

8. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The act of the appellant falls within mischief of Section 376(2) of the IPC, 1860 for which the trial Court has convicted the appellant and same is hereby affirmed.

9 Heard on the point of sentence.

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

10. 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 is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju