

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 507 of 2014

Manoj Patnayak, S/o. Panch Ram Patnayak, Aged About 33 Years, R/o. Near Rambhanta Stage, P.S. Kotwali, Distt. Raigarh C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through : S.H.O., P.S. Chakradhar Nagar, Distt. Raigarh (C.G.)

-----Respondent

For Appellant	: Mrs. Kiran Jain, Advocate
For Respondent/State	: Mr. Arun Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/03/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (Fast Track Court), Raigarh, District Raigarh (C.G.), in Sessions Trial No.32/2012 on 28.04.2014, convicting the appellant for the offence under Section 376 of the Indian Penal Code and sentencing him to undergo R.I. 10 years and fine of Rs.500/- and for the offence under Section 506-B of the Indian Penal Code and sentencing him to undergo R.I. 3 years and fine of Rs.200/- with default stipulations.
2. Facts of the case in brief is this that about one year prior to 04.11.2011, when the minor prosecutrix of aged about 14 years was alone in her house, the appellant by putting her under threat

committed the offence of rape with her. The appellant thereafter continued exploiting the prosecutrix. When the father of the prosecutrix came to know about it, FIR was lodged. The prosecutrix (P.W.-2) was medically examined and rest of the investigative procedures were completed and thereafter, charge-sheet was filed before the concerned trial Court.

3. The trial Court charged the appellant with offence under Section 376 and 506-B of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 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. One 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 appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The FIR was lodged after passing of more than one year from the date of incident, which itself raises serious doubt on the prosecution case. None of the prosecution witnesses have given statement before the Court to inspire confidence of the Court. Prosecutrix (P.W.-2) herself had admitted about enmity of the appellant with her father and uncle, therefore, the conviction of the appellant is

bad-in-law. Therefore, it is prayed that the appellant be acquitted of the charges leveled against him. 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. It is submitted that the prosecutrix (P.W.-2) has made clear statement regarding the offence committed by the appellant, which is supported with medical evidence, therefore, the prosecution has proved its case beyond all reasonable doubt. Therefore, no case is made out for acquittal or for reduction of the sentences. Hence, 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.-2) has stated that in the year 2011, when she was alone in her house and the appellant finding this opportunity, committed offence of rape with her and thereafter, he had threatened to kill her. She has stated that when her father came back, she immediately informed him about the incident. In the

cross-examination she has remained firm on her statement and has denied all the adverse suggestion given in defence.

9. Father of the prosecutrix Bhawani Shankar (P.W.-2) expired during the pendency of trial, therefore, his statement can not be recorded before the Court.
10. Dr. Ratna Manik Meshram (P.W.-5) examined the prosecutrix and on the basis of physical findings, she has opined that the prosecutrix was habitual to sexual intercourse vide her report Ex.P-18. Dr. Sunil Ratre (P.W.-7) conducted the radiological test to determine the age of the prosecutrix and has opined vide his report Ex.P-20 that prosecutrix was 13-15 years of age at the time of incident.
11. A.S.I., B.P. Mishra (P.W.-3) has stated that a written complaint (Ex.P-6) was given by Bhawani Shankar on the basis of which, FIR (Ex.P-7) was lodged and investigation was conducted.
12. After scrutinizing all the evidence of relevant witnesses, I am of this view that the prosecutrix (P.W.-2) has made clear statement that she was raped by the appellant. The age of the prosecutrix was below 18 years at the time of incident, which is totally undisputed. Her evidence is supported with medical evidence by Dr. Ratna Manik Meshram (P.W.5), which shows that the prosecutrix was being subjected to sexual exploitation. Although there is no other evidence of the persons having any knowledge of this incident, but the evidence brought on record are sufficient

to come to the conclusion that the appellant had ravished the minor prosecutrix, therefore, the conclusion drawn by the Court below appears to be correct and it needs no interference.

13. Considered on the alternative prayer made by the counsel for the appellant for reduction of sentence. On the date of incident i.e. in the year 2011, the minimum sentence of imprisonment, which may have been imposed was 7 years. After considering all the facts and circumstances of this case I feel inclined to reduce the sentence to 8 years from 10 years. Therefore, the appeal is allowed in part upholding the conviction of the appellant. The sentence imposed upon the appellant for offence Section 506B is also upheld, however, the sentence imposed upon him for the offence under Section 376 is reduced to 8 years along with fine of Rs.500/-.
14. Accordingly, the appeal is allowed in part.

Sd/-
(Rajendra Chandra Singh Samant)
Judge