

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 709 of 2014**

Dhanpati Ghasiya S/o Chhabilal Ghasiya, aged about 20 years R/o Village Savitripur, Thana Sankra, Civil & revenue Distt. Mahasamund (C.G.)

----Appellant

Versus

State of Chhattisgarh through the District Magistrate, Mahasamund District Mahasamund (C.G.).

---- Respondent

For Appellant	:	Mr. Kalpesh Ruparel, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

19/09/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 22/07/2014 passed in Sessions Trial No. 100/2013 by the Additional Sessions Judge, Fast Track Court, Mahasamund, District Mahasamund (C.G.) convicting the Appellant under Section 376 (2) (g) of the Indian Penal Code and sentenced him to undergo RI for 10 years and to pay fine of Rs. 4000/- with default stipulation.
2. In this case the age of the Prosecutrix was about 17 years at the relevant time. As per prosecution story, the Appellant is cousin of co-accused/Juvenile Bittu. On 19/09/2013 at about 19:30, the Prosecutrix made a written complaint in the concerned police station alleging therein that on the same day i.e. 19/09/2013 at about 11:00 am, co-accused/Juvenile Bittu and his brother had abducted the Prosecutrix who had gone to attend call of nature and committed rape with her.

Thereafter, both had fled away from the spot leaving the Prosecutrix there in unconscious condition. Later on, the neighbor of the Prosecutrix took her to the house of the Prosecutrix and then the Prosecutrix narrated the whole incident. On the basis of written complaint, FIR has been lodged vide Ex.P-8. The Prosecutrix was medically examined by Dr. Tara Agrawal (PW2). Her report is Ex.P-6. Kotwari register Article-A has been seized vide seizure memo Ex.P-6 from Kotwar Pooran Chouhan (PW3). Statement of the witnesses under Section 161 of the Cr.P.C were recorded. After completion of the investigation, a charge-sheet has been filed against the Appellant. Trial Court framed the charge under Section 376 (2) (g) of the IPC. A separate charge-sheet has been filed against co-accused/Juvenile Bittu before the Juvenile Court. As many as 6 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter.

3. After completion of trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any evidence available on record. The Prosecutrix in her cross-examination has categorically admitted the fact that she had never known the name of the Appellant and she had never seen him before recording her statement in the Court. She firstly saw the Appellant in Court at the time

of recording of her statement. It is further submitted that as per written complaint Ex.P-3, the incident has been committed by co-accused/Juvenile Bittu and his brother, but there is no material available on record on the basis of which it can be said that the Appellant is brother of co-accused/Juvenile Bittu. Apart from this, no Test Identification Parade has been conducted instead of the fact that the name of the Appellant is not mentioned in the FIR or 161 statement of the Prosecutrix, therefore, the conviction of the Appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. The Prosecutrix (PW1) in her Court statement has stated that on the date of incident at about 11:00 am, when she had gone to attend the call of nature towards forest, at that time both Bittu and the Appellant met her and they committed wrong thing with her due to that she became unconscious. Later on, her relatives took her to the home and then she told the whole incident to them. In para 4 of her cross examination, she has categorically admitted that she does not know the name of the Appellant. In para 8 also, she admitted the fact that she had firstly seen the Appellant in the Court when her statement was recorded and she had never seen him before that. Dr. Tara Agrawal (PW2) is the witness who examined the Prosecutrix on 20/09/2013. Her report is Ex.P-4. As

stated by this witness, she found multiple abrasions on the body of the Prosecutrix and she opined that the injuries appear to be caused within 2 days. She also stated that the intercourse was committed with the Prosecutrix. In para 8 of cross-examination of this witness, she denied the suggestion that the Prosecutrix was habitual to perform intercourse. Kotwar Pooran Chouhan (PW3) is the witness from whom Kotwari register Article -A has been seized. According to the entries of the above register, the date of birth of the Prosecutrix has been mention as 01/07/1995. The above fact has not been challenged by the Appellant, thus it is well established that at the relevant time, the age of the Prosecutrix was above 18 years. C.L Kosre (PW5) is the Investigation Officer, who investigated the whole matter.

8. On minute examination of the above evidence, it is clear that at the time of incident, the age of the Prosecutrix was above 18 years. From the statement of Dr. Tara Agrawal (PW2) and MLC report of the Prosecutrix Ex.P-4, it is also established that rape was committed with the Prosecutrix. As stated by the Prosecutrix, the rape was committed with her by co-accused Bittu and the Appellant, but from the admission made by her during her cross-examination, it is also established that she does not know the name of the Appellant and she had not seen him before recording her statement before the Court. In these condition, it is not established that the Appellant is the person who was involved with co-accused Bittu and the same is suspicious. Apart from this, the written report has been lodged against co-accused Bittu ad his cousin, but there is no evidence available on record on the basis of which it can be said that the Appellant is brother of co-accused Bittu. Since the report was

made against co-accused Bittu and one unknown person, therefore, it was essential for the Prosecution to conduct Test Identification Parade, but in this case no Test Identification Parade has been conducted. In this situation and from the above evidence, it is not established beyond all reasonable doubt that the Appellant had committed rape with the Prosecutrix, therefore, the finding of the trial Court is not in accordance with the evidence available on record as no offence is proved against the Appellant. Thus, the impugned order dated 22/07/2014 passed in Sessions Trial No. 100/2013 by the Additional Sessions Judge (FTC), Mahasamund is quashed.

9. Accordingly, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. He be released forthwith, if not required in any other case.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge