

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1101 of 2015**

- Omnath S/o Bhuneswar Dewangan Aged About 21 Years R/o Ward No. 2 Panderdalli Kacche Dafai Rajhara P/S Rajhara Distt. Balod Civil And Revenue Distt. Durg Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Rajhara Distt. Balod Chhattisgarh

---- Respondent

For Appellant	:	Shri Ajay Mishra, Advocate
For Respondent / State	:	Shri Anand Verma, Dy.G.A.

D.B.- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order On Board**Per Manindra Mohan Shrivastava, J.****07/05/2019**

This appeal is directed against impugned judgment of conviction and order of sentence dated 11/09/2013 passed by the 2nd Additional Sessions Judge, District - Balod in Sessions Trial No.04/13 whereby and whereunder, the appellant has been held guilty of commission of offences as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 363 of IPC	Seven years of R.I. with fine of Rs.1,000/- (in default of payment of fine, additional S.I. of 30 days)
2	U/s 376 of IPC	Life imprisonment with fine of Rs.2000/- (in default of payment of fine, additional S.I. of 60 days)

2. Prosecution story reveals commission of heinous offence against a girl child

aged three years subjected to rape.

According to the prosecution case, the appellant was the next door neighbour of Lekhram Vishwakarma (PW1). It is said that on 12/11/2012, the appellant had taken the girl child for a round in nearby place but when he did not return, search was carried out and then the child and the appellant were found in nearby bushes with their clothes removed and private parts of the child bleeding. Report was lodged by Lekhram (PW1) and the girl child was examined by two doctors – Dr. Chhaya Tiwari (PW4) and Dr. Rashmi Glade (PW6). Their report revealed that the girl child was subjected to forcible sexual intercourse. Charge sheet was filed against the appellant. He was charged of commission of offence which he denied and therefore, he was put to trial.

3. Learned Trial Court, relying on the medical evidence and the evidence of the prosecution witnesses which proved that the appellant had taken the child and later on, both of them were found in nearby bushes, held the appellant guilty of commission of offence.

4. Learned counsel for the appellant argued that the allegations of the appellant having taken the girl child and he being found with the girl in bushes, is not reliable. It is next submitted that the appellant was found in drunken condition and it is quite probable that the offence might have been committed by some other person and not by the appellant. The argument which has been raised is that in the instant case, the appellant was found to be intoxicated, sentence of life imprisonment would be disproportionate to the gravity of criminal overt act.

5. Learned State counsel would submit that the prosecution case is proved beyond doubt from the evidence of Lekhram Vishwakarma (PW1), Manoj Vishwakarma (PW2) and Mithlesh Nevendra (PW3) which proves that the appellant was the neighbour of the girl child. In the evening of the date of incident, he had taken the child for a round and when they did not return, search was carried out and the appellant was found

having removed clothes and private part of the child was bleeding. He also submits that the medical evidence on record, proved by Dr. Chhaya Tiwari (PW4) and Dr. Rashmi Glade (PW6) proves beyond doubt that the girl child had suffered injury due to forcible act of rape committed on her.

6. Lekhram Vishwakarma (PW1) – father of the girl child aged three years who is said to have been ravished by the appellant, has stated that the appellant had taken the girl child for a round in the evening and when they did not return, his neighbour Mithlesh and his brother Manoj went out to search the girl and finally, the girl was recovered from the side of a ground and he was informed that the appellant had taken the girl child. He further deposed that he saw that the legs of her daughter were stained with blood which indicates commission of offence of rape. Therefore, he lodged FIR in Ex.P/1 in the police station. In his cross-examination, it has been elicited that the appellant is his next door neighbour. In order to impeach his credibility, a suggestion has been given that as the accused was having illicit relation with the wife of this witness, he is being falsely implicated, which has been denied.

7. Manoj Vishwakarma (PW2) and Mithlesh (PW3) are the witnesses who have clearly stated that after the appellant had taken the girl child for a round and when they did not return, they went out together in search of the girl and near a ground, they heard cries of the child and when they approached, they found that the appellant was sitting with the girl. The lower wearing apparels of the appellant and the girl child both were found removed and the girl child was bleeding in her private parts. The evidence of these two witnesses has remained unimpeached in their cross-examination.

8. The evidence with regard to the girl child having been subjected to inhuman act of rape has been proved by overwhelming evidence of Dr. Chhaya Tiwari (PW4) and Dr. Rashmi Glade (PW6). Their evidence clearly shows that the girl child had suffered number of injuries and her private part was badly damaged and bleeding. The

evidence in this regard is emphatic and leaves no manner of doubt that the girl child was subjected to rape in a most violent manner exhibiting complete depravity of mind.

9. The appellant's medical examination done by Dr. K.K.Singha (PW5) proves that the appellant is a person of normal development and capacity of sexual intercourse. In view of above clinching and reliable evidence on record, proves beyond reasonable doubt, the involvement of the appellant in the alleged overt act is proved beyond doubt.

Though, learned counsel for the appellant sought to invoke Court's compassion towards reduction of life imprisonment to any lower sentence, we find that in the present case, there is no scope for reducing the period of sentence. Present is a case of heinous act on the part of the appellant in not sparing a girl child aged 3 years from his sinister design of deriving sadistic pleasure in depravity of mind by subjecting her to violent rape.

On the contrary, we are of the opinion that present is a case where sentence of life imprisonment has been rightly awarded. Therefore, no case for interference is made out. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge