

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1088 of 2014**

Rakesh Kumar Dhruv S/o Gopal Dhruv Aged About 22 Years R/o Village Khairjhitti, PO And PS - Fingeshwar, Distt. Gariyaband C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through The Distt. Magistrate, Gariyaband, Distt. Gariyaband C.G. , Chhattisgarh.

---- Respondent

For Appellant	:	Shri Shivendu Pandya, Advocate.
For Respondent/ State	:	Shri Rahim Ubwani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****07.03.2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 25.9.2014 passed by Learned Additional/ Upper Sessions Judge (Presided over by Shri B.P. Pandey), Gariyaband, District Gariyaband, Chhattisgarh in Sessions Trial No. 6 of 2014, whereby and whereunder the learned Additional/ Upper Sessions Judge has convicted the appellant for the offences under Sections 376(1) and 417 of the IPC and sentenced him to undergo rigorous imprisonment for 7 years and 1 year and to pay fine of ₹10,000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 1 year with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) The case of the prosecution, in brief, is that between the period of December 2012 and January, 2013, the appellant allured the prosecutrix (PW-1) with a promise to marry her and then committed the offence of rape with her on numerous occasions because of which, she became pregnant. When the pregnancy advanced, the prosecutrix (PW-1) disclosed about the incident to her parents. A meeting of village elders was held but the appellant denied the incident and refused to marry the prosecutrix (PW-1). Subsequent to which, FIR vide Ex.P/1 was lodged on 27.10.2013. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(4) During trial, the Court below framed the charge under Section 376 of the IPC. The appellant denied the charges and prayed for trial. The prosecution examined 11 witnesses to prove the guilt of the appellant. Statement of the appellant was recorded under Section 313 of the Cr.P.C. wherein the appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question. No witness was examined in defence.

(5) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(6) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the appellant submits that the appellant has been erroneously convicted by the trial Court and the prosecution has failed to prove its case beyond reasonable doubt. The prosecutrix (PW-1) was a major girl on the date of incident being aged about 19 years. In her statement before the Court she has clearly stated in examination-in-chief that she and the appellant had a love affair and both have physical relation which the prosecutrix (PW-1) never opposed. The only reason for lodging FIR is that the appellant had refused to marry the prosecutrix (PW-1) when the meeting of village elders was held. In the subsequent development, the appellant and the prosecutrix (PW-1) both have married and they are leading married life together alongwith the child born out of their relationship. There is no evidence given by any of the witnesses to show that the relation of the appellant and the prosecutrix (PW-1) was without the consent and willingness of the prosecutrix (PW-1) therefore, the conviction against the appellant is bad in law. Hence, it is prayed that on these grounds, the appeal may be allowed and the appellant may be acquitted of the charges framed against him.

(8) Per contra, learned counsel for the Respondent/ State opposed the prayer and submissions. It is submitted that the appellant has obtained the consent of the prosecutrix (PW-1) by deceit, by making her believe that he will marry her and thereafter, he refused to marry her. Therefore, it is a case of commission of offence of rape. The prosecutrix (PW-1) has clearly supported the prosecution case and the prosecution has proved its case beyond reasonable doubt. Hence, no ground is made out for interference in the impugned judgment.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(10) The prosecutrix (PW-1) has stated in her examination-in-chief that the appellant was her neighbour and both were acquainted with each other and then they developed a love affair, because of which, they met with each other continuously and had physical relation. The appellant has stated before her that he would marry her and then had physical relation with her because of which, she became pregnant. She has further submitted that the appellant had to go to Gujarat for training in Veterinary Department, during that period her pregnancy advanced and she had to disclose about it to her mother. The meeting was held in which the appellant came but he denied that the child in womb of the prosecutrix (PW-1) belonged to him and also refused to marry her. Thereafter, FIR vide Ex.P/1 was lodged by her. In cross-examination, she has admitted about the love affair with the appellant and also admitted that because of her love for the appellant she and the appellant

both have physical relation for about 5 times in different places. She has also admitted that she herself wanted the physical relation and never disclosed about it to her family members. Again, she has made this admission that in their love affair she never had any talk of marriage with the appellant. Shivram Kumar (PW-2) is father of the prosecutrix (PW-1). He stated about the pregnancy of his daughter, the prosecutrix (PW-1) and about the meeting in which the appellant refused to marry the prosecutrix (PW-1).

(11) Meena Bai (PW-5) is mother of the prosecutrix who has made similar statement. Both these witnesses have not given any narration as to in what manner and for what reason the physical relation took place between the prosecutrix (PW-1) and the appellant.

(12) Dr. Divya Kudeshiya (PW-9) had examined the prosecutrix (PW-1) vide Ex. P/7 on 28.10.2013 and opined that she has recently delivered a child. Jhumuklal Sadilya (PW-11) stated about conducting of the various procedures of investigation.

(13) After scrutinizing the evidence of the prosecutrix (PW-1) and other witnesses, it has appeared that the prosecutrix (PW-1) has made a clear admission that she and the appellant were in love with each other because of which, they used to meet and have physical relation. She has not made a single statement that the appellant ever forced her to have physical relation with him or that he had exploited her sexually. In the development that took place later on, the prosecutrix (PW-1) became

pregnant and their affair was disclosed. The refusal of the appellant to marry the prosecutrix (PW-1) was the reason that triggered the prosecution against him. There is no doubt that the prosecutrix (PW-1) was a major girl on the date of incident and according to the statement given by her and her admissions in her cross-examination it is clear that she had been a consenting and willing party in the physical relation with the appellant.

(14) The prosecutrix (PW-1) herself is the best witness to make a statement about the nature of her relation against the appellant. The other witnesses, namely, Shivram Kumar (PW-2) and Meena Bai (PW-5) have also not stated that the prosecutrix (PW-1) ever informed them that she was raped by the appellant. Therefore, it is a case of consensual physical relation and there had never been a scope for prosecution and even then, the trial Court recorded conviction against the appellant which appears to be bad in law and liable to be set aside. Hence, on the basis of the findings herein-above, this appeal is allowed and the conviction and sentence imposed upon the appellant by the impugned judgment is hereby set aside and the appellant is acquitted of the charges framed against him. The appellant is in jail and he be set at liberty forthwith after being satisfied by the requirement of Section 437A of the Cr.P.C.

(15) Accordingly, the appeal is allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE