

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1158 of 2016**

Rampreet @ Rampratit @ Bhaira S/o Kunnu Lal, Verma Chamar Aged About 40 Years R/o Village Chandrapur, Tahsil Kevchar, Police Station Janeh, District Reeva Madhya Pradesh At Present Joratarai, Police Station Bhilai Bhatthi, District Durg Chhattisgarh , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through The Police Station Bhilai Bhatthi, District Durg Chhattisgarh , Chhattisgarh.

---- Respondent

For the Appellant	:	Shri C.B. Kesharwani and Shri C.P. Soni, Advocates.
For the Respondent/ State:		Shri I. Lakra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****05.04.2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 12.5.2010 passed by the Learned 11th Additional Sessions Judge (F.T.C.), Durg, District Durg, Chhattisgarh in Special Trial No.32 of 2009, whereby and whereunder, the learned 11th Additional Sessions Judge has convicted the appellant under Sections 342 and 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 6 months and 7 years and to pay fine of Rs.500/-, in default of payment of fine, to further undergo RI for 6 months, respectively with a direction to run both the sentences 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 on 17.11.2008 at about 3:00 pm in the afternoon, the prosecutrix (PW-1) was called by the appellant to his house and then she was forcibly raped by him. When the prosecutrix (PW-1) tried to escape she was threatened by the appellant that he will kill her. FIR vide Ex.P/1 was lodged in the police station and the investigation was taken up. 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 against the appellant.

4. The appellant was charged for the offences under Sections 342, 376 and 506 part II of the Indian Penal Code. He denied the charges and prayed for trial. In order to prove the guilt of the appellant, the prosecution examined 12 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. One 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. It is submitted by the learned counsel appearing on behalf of the appellant that the appellant has been erroneously convicted by the trial Court. Statement of the prosecution witnesses are not reliable and trustworthy. Statement of the prosecutrix (PW-1) was not supported by the prime witness Rani (PW-2). Radiological age of the prosecutrix (PW-1) was about 15 to 16 years therefore, by adding of marginal error she may have been aged about 18 years. Further, in the medical evidence also there is no such opinion of the doctor, namely, Dr. Shyamli Rai (PW-10) about sexual offence having been committed with the prosecutrix (PW-1), therefore, the appellant is entitled for acquittal in this case. It is also submitted that the appellant has already undergone the sentence of imprisonment imposed upon by this Court, even though, no case of conviction is made out against the appellant and it is prayed that the appellant be acquitted in the case.

8. Learned counsel for the State opposes the grounds raised in appeal and the submissions made in this respect.

9. I have heard the learned counsel for the parties and perused the record of the Court below.

10. The prosecutrix (PW-1) has stated that on the date of incident, when she alongwith her friend Rani (PW-2) were going towards the field to answer the call of nature, then the appellant asked them to come to his house and wash the utensils. This witness and her friend Rani (PW-2) both went to the house of the appellant for cleaning purpose and after doing the cleaning, the appellant all of a sudden gagged the mouth of this witness with cloth and

then sexually assaulted and raped her. She had lodged FIR vide Ex. P/1. In cross-examination, her statement has remained unrebutted.

11. Rani (PW-2) has not supported the case of the prosecution in her examination-in-chief. However, when she was cross-examined by the prosecutor after declaring hostile she has admitted the earlier statement given to the police and this admission made by her had not been specifically challenged in her cross-examination.

11. Durpat Bai (PW-3), who is mother of the prosecutrix (PW-1) has stated that her daughter/ prosecutrix (PW-1) narrated to her about the incident and she has remained firm on this statement in her cross-examination.

12. Madan Gopal (PW-4), who is father of the prosecutrix (PW-1) was informed about this incident by his wife Durpat Bai (PW-3).

13. Kavita Soni (PW-6) is the school teacher from whom the school register was seized during investigation vide Ex.P/9.

14. Shankarlal Deshlehra (PW-7) is the Headmaster of the said school. He on the basis of the entry in the school register has stated that the date of birth of the prosecutrix (PW-1) is 10.12.1995. In cross-examination, he has stated that the date of birth was entered on the basis of the information given by the parents of the child which further supports that the date of birth of the prosecutrix (PW-1) was 10.12.1995.

15. Dr. Shyamili Rai (PW-10) examined the prosecutrix (PW-1) and opined vide his report Ex. P/17 that she did not find any symptoms of sexual intercourse with the child. This opinion cannot be regarded as a negative opinion because she could not find any symptoms to explain the act of the accused in clear terms even then no weight can be given to the opinion given by the examining doctor in presence of specific and clear statement made by the prosecutrix (PW-1), which has been found reliable and trustworthy by the Court.

16. After closely scrutinizing the evidence of all the relevant witnesses, in this case and after due consideration I am of this opinion that the prosecution case is beyond reasonable doubt and the trial Court has not committed any error in convicting and sentencing the appellant by the impugned judgment. Therefore, the appeal is without any substance and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge