

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1160 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.33 of 2009, whereby and whereunder, the learned 11th Additional Sessions Judge has convicted the appellant under Sections 342, 376(1) and 506 part-II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 6 months, 7 years and 1 year 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 all 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 3:30 pm in the afternoon, the appellant called the prosecutrix (PW-1) alongwith her friend Santoshi (PW-2) to his house for doing some cleaning work and thereafter, he confined the prosecutrix (PW-1) and by putting her under threat of dire consequences forcibly raped her. The prosecutrix (PW-1) immediately informed about the incident to her parents and thereafter, the FIR vide Ex. P/1 was lodged in the police station and the case was investigated. 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. 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. It is submitted by learned counsel appearing on behalf of the appellant that the appellant has been erroneously convicted by the trial Court. Statements of the prosecution witnesses were not reliable and trustworthy therefore, the conviction of the appellant is bad in law. It is further submitted that the appellant was arrested in this case on 19.11.2008 and he is still continuing in jail because of his conviction in another criminal case of similar nature against him which has been tried by the Court below being Sessions Trial No. 32 of 2009. Hence, it is prayed that this Court may be pleased to order that the sentences passed against the appellant in Sessions Trial No. 32 of 2009 to run concurrently with the sentence of imprisonment imposed upon the appellant in S.T. No. 33 of 2009 and on this basis, this appellant may be released from the jail as the sentence of imprisonment imposed upon him considered as already undergone.

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, the appellant called her and her friend Santoshi (PW-2) to his house for some cleaning work and then the appellant raped her. Santoshi (PW-2) has made a similar statement and her statement has remained unrebutted in her cross-examination.

11. Bharat (PW-3), is father of the prosecutrix (PW-1) who was informed about the incident.

12. Mogra (PW-4), is mother of the prosecutrix (PW-1) to whom the prosecutrix (PW-1) narrated about the incident.

13. Shankarlal Deshlehra (PW-7) is the Headmaster of the Government School, Bhilai Bhatti who on the basis of the admission register of the school stated that the date of birth of the prosecutrix (PW-1) is 4.8.1997. On that basis, the age of the prosecutrix (PW-1) was about 15 years.

15. Dr. Shyamili Rai (PW-12) has examined the prosecutrix (PW-1) vide Ex. P/10. She has opined that no symptoms were found regarding forceful act of rape however, this is an opinion and in view of the statement given by the prosecutrix (PW-1) with all the details no weight can be given to the opinion given by the examining doctor.

16. After closely scrutinizing the evidence of all the relevant witnesses in this case and after due consideration of the entire evidence of the prosecution before the trial Court, I am of this opinion that the prosecution case is proved beyond reasonable doubt and there is no scope for interference with the conviction and sentence imposed upon the appellant. On the basis of the additional argument made on behalf of the appellant, it is considered that the incident had been of the same date, same time and same place in which the appellant committed the offence of rape with two

girls of minor age. In the earlier case tried as Sessions Trial No. 32 of 2009, the appellant has already undergone the sentence of imprisonment imposed upon him alongwith the default imprisonment for nonpayment of fine. As informed by counsel for the appellant, the appellant is still continuing in jail since and the date of his arrest i.e. 19.11.2008 therefore, as on today, it appears that the appellant has exceeded the sentence of imprisonment imposed upon him in this case only for the reason that there is no specific order by the Court below in the present sessions trial that the sentence of imprisonment shall run concurrently with the sentence of imprisonment imposed upon him in the previous sessions trial.

17. Considering the length of detention of that the appellant has already undergone, which is about more than 10 years, I feel inclined to allow the prayer made by counsel for the appellant on this behalf. After due consideration, the appeal is dismissed. As per the provisions of Section 427(1) of the Cr.P.C., it is ordered that the sentence of imprisonment imposed upon the appellant in this case shall run concurrently with the sentence of imprisonment imposed upon the appellant in Sessions Trial No.32 of 2009 which has been confirmed by this Court in Cr.A. No. 1158 of 2016. The Jail Authorities are directed to comply with the directions given and the orders passed in this appeal.

18. Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge