

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1084 of 2014**

- Tulsiram Lahre, S/o Resham Lal Lahre, aged about 23 Years, R/o village Bhalpahri Urga, Korba, Distt. Korba C.G.

---- Appellant**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station Urga, District Korba, Chhattisgarh

---- Respondent

For Appellant
For Respondent/State

Shri P.K. Tulsyan, Advocate.
Shri Sudeep Agrawal, Deputy A.G.

Hon'ble Shri Justice Gautam Chourdiya**Judgment****14/07/2020**

1. The matter is heard through Video Conferencing.
2. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 06.09.2014, passed by the Additional Sessions Judge Korba (FTC), Korba, C.G. in Special Session Case No.08/2014, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 376 (1) of Indian Penal Code	Rigorous Imprisonment for seven years and fine of Rs.2,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.

Under Section 450 of Indian Penal Code	Rigorous Imprisonment for three years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.
Under Section 4 of the Protection of Children from Sexual Offence Act, 2012	Rigorous Imprisonment for seven years and fine of Rs.2,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for six months.

(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that on 07.12.2013 at about 10 am, prosecutrix, aged 14 years, was alone at her home and watching T.V., at that time accused/appellant entered her house, pressed her mouth with hand and took her inside the home by dragging her where he committed forcible sexual intercourse with her and threatened her for life. At that time, her cousin brother came there and on seeing him the accused/appellant fled from there. On being asked, prosecutrix narrated the said incident to him. Then, prosecutrix went to the police station and lodged FIR Ex.P-1 on same day i.e. 07.12.2013 against the accused/appellant under Crime No.323/13 in police station Uрга, District Korba, C.G. Prosecutrix was sent for medical examination who was examined by PW-9 Dr. Hemu Tandon and she submitted her report vide Ex.P-11 as under:-

Physical Examination- Average built girl, secondary sexual characters not developed, breast development started. No external injury, teeth 7+7/7+7, LMP-4.12.2013.

External Examination- No inflammation, no scar, no bleeding, hardly admitting index finger, two slides made from vaginal secretion, sealed, packed for Histopathological examination. Handed over to P.O. on duty.

According to the Doctor, there was no sign of recent intercourse and exact opinion can be given after Histopathological examination.

4. Accused/appellant was also sent for medical examination who was examined by PW-6 Dr. O.S. Kanwar vide Ex.P-9A and the appellant was found capable of performing sexual intercourse.
5. During investigation, spot map was prepared vide Ex.P-3 by PW-13 D. N. Singh Raj, IO and spot map Ex.P-4 was prepared by PW-11 Jalandhar Sidhar, Patwari. Clothes of the prosecutrix were seized vide Ex.P-5. Mark-sheet (Article 'A') of prosecutrix was seized vide Ex.P-6. One undergarment of the appellant was seized vide Ex.P-8. Two slides prepared were seized vide Ex.P-9. Accused/appellant was arrested on 08.12.2013 vide Ex.P-13. The seized articles were sent for chemical examination vide Ex.P-17. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Sections 452, 376 of IPC and under Section 4 of the Protection of Children from Sexual Offence Act, 2012.
6. The trial Court framed charges under Sections 450, 376 of IPC and under Section 4 of the Protection of Children from Sexual

Offence Act, 2012 against the accused person which were denied by him and he prayed for trial. The prosecution examined 13 witnesses in support of its case i.e. PW-1 Prosecutrix, PW-2 Smt. Kalindri Bai, PW-3 Ravi Shankar Patle, PW-4 Sudharam, PW-5 Ashok Patle, PW-6 Dr. O.S. Kanwar, PW-7 Seluram Nirmalkar, PW-8 Heyram Chauhan, PW-9 Dr. Hemu Tandon, PW-10 Lal Kumar Patle, PW-11 Jalandar Sidhar, PW-12 Resham Lal Lehre and PW-13 D. N. Singh Raj. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

7. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
8. Learned counsel for the appellant submits that due to previous enmity with the prosecutrix, the appellant has been falsely implicated in this case. Looking to the statement of PW-1 prosecutrix, the prosecution has failed to prove its case beyond all reasonable doubt. He further submits that no sign of forcible sexual intercourse was found on the body of the prosecutrix. He also submits that no injury was found on the body of the prosecutrix. No cogent evidence is available on record against the appellant. No independent witness has supported the prosecution case. Therefore, the trial Court only on the basis of conjectures and surmises has held the appellant guilty and

therefore, the impugned judgment is liable to be set aside and the appellant be acquitted of all the charges.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
10. Heard learned counsel for the parties and perused the material available on record.
11. PW-1 Prosecutrix has specifically and categorically stated in her deposition that on 07.12.2013 at about 10 am, she was alone at her home and watching T.V., at that time accused/appellant entered her house, pressed her mouth with hand, tied her hands with a piece of cloth (*Gamcha*) and took her inside the home by dragging her, removed her clothes and despite her protest committed forcible sexual intercourse with her and threatened her for life. Hearing her voice, her cousin brother came there, and on seeing him accused/appellant fled away from the spot. On being enquired, she narrated the said incident to her cousin brother and then he went to the field and informed the incident to her mother. Thereafter, FIR Ex.P-1 was lodged against the accused/appellant.
12. PW-2 Kalindri Bai- mother of the prosecutrix while supporting the prosecution case has stated that on the date of incident her daughter, aged 14 years, was alone at home. She also stated that her nephew (son of elder brother-in-law) came into the field and

informed her about the incident. Then, she went to her home where her daughter told her about the forcible sexual intercourse committed by the appellant. After hearing this, she went to the home of accused/appellant and asked him about the incident on which he replied that he went her home for repairing T.V. and he also admitted this fact that by mistake he entered her home and he (appellant), his mother and brother-in-law requested her (PW-2 Smt. Kalendri Bai) not to lodge report against him/appellant.

13. PW-3 Ravi Shankar Chauhan has proved the same facts as stated by PW-1 Prosecutrix and PW-2 Kalendri Bai. He also stated that on 07.12.2013 he along with PW-10 Lal Kumar was going towards the road side. At that time, he saw the door of the prosecutrix open and when he went there he saw the appellant and the prosecutrix in objectionable position. The appellant, after seeing him (this witness), fled from the spot and thereafter the prosecutrix narrated the entire incident to him. Then, he went to the field and informed the incident to PW-2 Kalendri Bai and after that FIR Ex.P-1 was lodged against the accused/appellant. Statement of this witness is also fully supported by PW-10 Lal Kumar Patle.

14. PW-4 Sudharam is the uncle of the prosecutrix. He stated in his deposition that PW-10 Lal Kumar informed him about the incident on telephone. Then he came from field at about 1:50 pm and went to the home of prosecutrix where her mother narrated him about the incident.

15. PW-5 Ashok Patle, Inspector, has proved the seizure memo Ex.P-9. PW-8 Heyram Chauhan, Inspector, has proved the seizure memo Ex.P-10.
16. PW-6 Dr. O.S. Kanwar medically examined the accused/appellant vide Ex.P-9A and gave his report as mentioned in the preceding paragraph. He has duly proved the said report. He also examined the seized undergarment of the appellant and found that undergarment was of brown colour and had no stains on it.
17. PW-7 Seluram Nirmalkar is the Head Master of the school who has proved the admission register (unexhibited) showing the date of birth of the prosecutrix to be 23.12.98. He states that mark-sheet (Article- A) of class 6th of prosecutrix was released from his school.
18. PW-9 Dr. Hemu Tandon medically examined the prosecutrix vide Ex.P-11 and gave her report as mentioned in the preceding paragraph. She has duly proved the said report. She also examined the seized clothes of the prosecutrix and found brown colour, brownish black colour and redish brownish stains on blue slawar, blue kurta and grey colour undergarment of prosecutrix.
19. PW-11 Jalandhar Sidhar is the Patwari. He has proved the spot map Ex.P-4.
20. PW-12 Resham Lal Lehre is the father of the accused/appellant. He has proved the arrest memo Ex.P-13 and arrest notice vide Ex.P-14.

21. PW-13 D.N. Singh Raj, Assistant Sub-Inspector, stated in his deposition that he lodged the FIR Ex.P-1, prepared the spot map Ex.P-3, obtained consent of prosecutrix and her mother for medical examination of prosecutrix vide Exs. P-7 and P-2, wrote application to SDM, Korba for private part examination of prosecutrix Ex.P-15, sent the prosecutrix for medical examination Ex.P-11, proved the seizure memo Exs.P-9 & 6, arrested the accused vide Ex.P-13, informed about arrest of the appellant to his father vide Ex.P-14, sent the accused for medical examination vide Ex.P-9A, proved seizure memo Ex.P-10 and sent the seized items to FSL vide Ex.P-17.

22. Close scrutiny of the evidence makes it clear that on 07.12.2013, accused/appellant entered the home of prosecutrix when she was all alone in her home, dragged her inside her house, removed her and his own clothes and committed forcible sexual intercourse with her. Version of the prosecutrix, who had given a vivid account of the entire episode as to how the accused sexually assaulted her, finds corroboration from the evidence of PW-3 Ravi Shankar Chauhan who reached the place of incident, saw the prosecutrix and the accused/appellant in objectionable position and upon seeing him the accused/appellant fled from the spot. Statement of prosecutrix finds corroboration not only from the promptly lodged FIR but also from the medical evidence that she was subjected to sexual intercourse. Nothing has been elicited by the defence as to why the appellant has been falsely implicated in the case and thus

the stand of false implication taken by the accused/appellant is not worth acceptance.

23. The next question which arises for consideration by this Court is whether the finding recorded by the trial Court holding the prosecutrix to be minor on the date of incident is correct or not.

24. In this case, the school admission register (unexhibited) discloses the date of birth of the prosecutrix as 23.12.98 and as per the mark-sheet (Article-A) which was proved by PW-7 Seluram Nirmalkar, who is teacher in the school where the prosecutrix was admitted for studying, also her date of birth is 23.12.98. Her mother PW-2 Smt. Kalendri Bai also stated in her deposition that at the time of incident her daughter was of 14 years. Thus, from the material collected by the prosecution, I am of the view that the prosecution has succeeded in proving that the prosecutrix was minor on the date of incident.

25. Looking to the statement of the prosecutrix which is duly supported by the evidence of supporting witnesses i.e. PW-2 Smt. Kelandi Bai, PW-3 Ravi Shankar Patle, PW-10 Lal Kumar Patle and PW-7 Seluram Nirmalkar and the medical evidence, the prompt FIR, the age of the prosecutrix and further considering the fact that there is no major contradiction or omission in her statement and other supporting witnesses statements affecting the creditability of her version, no any evidence was adduced by the defence to substantiate the plea of previous enmity or for false implication of the appellant, this Court finds no reason to

disbelieve prosecutrix's statement or to arrive at a conclusion that she has falsely implicated the appellant. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

26. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 15.06.2020 submitted by Jail Superintendent Central Jail, Bilaspur, the appellant having completed the jail sentence has been released from jail on 10.12.2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh