

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 3112 of 1999

Judgment reserved on 20.02.2020

Judgment Delivered on 18.05. 2020

Rameshwar S/o. Karan Sai Basore, Aged 25 years, resident of village Salka(Talka) P.S. Baikunthpur, District Korea (M.P.)

---- Appellant

Versus

State of Madhya Pradesh through Police Station Baikunathpur, District Korea (M.P.) (Now CG)

---- Respondent

For Appellant : Mr. Rishi Rahul Soni, Advocate(Legal Aid)
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Facts of the case in brief are that on 03.01.1999 at about 6 PM the prosecutrix (PW-1) aged about 12 years had gone to Baikunthpur market with her sister Basanta and brother-in-law Raju @ Rajiv (PW-2) where her neighbour Rakhi (PW-4) met her and sprinkled some substance on her head which made her mental state disturbed. Case of the prosecution further discloses that thereafter PW-1 refused to accompany her brother-in-law and rather agreed to go in the company of Rakhi (PW-4). Subsequently, her brother-in-law (PW-2) went away along with Basanta. Thereafter, the prosecutrix

accompanied Rakhi (PW-4) and the accused/appellant herein to the bus stand where accused gave her Rs.10 and asked her not to make the disclosure to anyone. Saying so, the accused and the prosecutrix boarded a jeep and went to a place known as Chhote Bazar from where he took her to the house of his brother-in-law namely Pati (PW-7) at Bhaiyathan. They stayed together in the house of PW-7 and during their stay the accused physically exploited her on two occasions against her will and without her consent. On coming to know about this development through Raju @ Rajiv (PW-2), father of the prosecutrix namely Chiraunji Prasad (PW-3) made a search operation and ultimately recovered her from the house of PW-7. On being recovered, she narrated the entire incident of being taken away, kept in the house of PW-7 and her subjection to forcible sexual intercourse with her on two occasions by the accused. This led the prosecutrix to lodge report Ex.P-1 on 12.01.1999 i.e. with a lapse of about a week therefrom on the basis of which offences under Sections 363, 366 and 376 IPC were registered against the accused/appellant. After medical examination of the prosecutrix and completion of investigation-related formalities, charge-sheet was filed against the accused under the same sections followed by framing of charge accordingly.

2. Learned Court below by its judgment dated 16.10.1999 passed in Sessions Trial No.162/1999 convicted the accused/appellant under all the aforesaid three sections and sentenced him to undergo RI for 3 years with fine of Rs.200 on two counts i.e. under Sections 363 and

366 and to undergo RI for 5 years with fine of Rs.200 under Section 376 IPC, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submits that the prosecution has utterly failed to prove the factum of prosecutrix being minor at the relevant time but yet the Court below has fallen in a serious legal error and held the accused guilty under Sections 363, 366 and 376 IPC which is blatantly illegal. He further submits that the accused stayed in the house of the prosecutrix where some intimacy got developed between the two and even their marriage was settled but remained in limbo for some reason or the other, which goes to demonstrate that the prosecutrix accompanied the accused and surrendered herself at his disposal with consent. He further submits that the incident had taken place on 03.01.1999 whereas the report came to be lodged on 12.01.1999 involving a substantial period of more than a week, but no satisfactory explanation has come forth from the prosecution regarding such inordinate delay.
4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below holding the accused/appellant guilty under Sections 363, 366 and 376 IPC are strictly based on due appreciation of the evidence on record and therefore, no interference with a well written judgment is called for.
5. It is relevant to note that most of the witnesses examined by the prosecution namely Rakhi Bai (PW-4), Teerathram (PW-5), Banwari (PW-6), Pati (PW-7), Ramesh Chandra (PW-8) and Mohmmad Naeem

(PW-9) have turned hostile and not stated anything against the accused. This Court has looked into the evidence of all the witnesses with greater degree of caution yet could not lay its hand even on a single document which could conclusively disclose the prosecutrix was minor on the date of incident. Neither her father namely Chiraunji Prasad (PW-3) has disclosed the date of birth of the prosecutrix nor placed any documentary evidence such as school certificate, birth certificate or any other piece of paper issued by the competent authority bearing her date of birth. Though Dr. Kalawati Patel (PW-10) who medically examined the prosecutrix has opined her age to be about 12 years yet for further determination she referred her for radiological test. No external or internal injury has been noticed by this witness on the person of the prosecutrix. As regards recent sexual intercourse, no definite opinion has been expressed by the doctor. She however has opined that the breasts of the prosecutrix were developing and pubic hair were also present though scanty. The doctor (PW-10) has also opined the hymen of the prosecutrix being missing. Further explaining the meaning of missing hymen, she has stated that it was not recently torn but was old torn. This goes to show that the physical relations between the two existed even earlier to the occurrence. This gets support from the evidence of the witnesses that on account of the close intimacy between the two their marriage was also fixed but could not be taken to a logical end. There is nothing on record to show that the accused/appellant took away the prosecutrix from the lawful custody of her guardian nor is there

anything on record to suggest that he did so on the promise of marriage etc. rather, as has already been said, the accused used to stay in the house of the prosecutrix for about two years and during this long period they developed intimacy with each other and used to go on outing together. On radiological examination also the prosecutrix was found to be aged about 15-16 years old. However, the radiologist could not be examined in the Court to make the things clear by way of cross-examination, which gives the benefit to the accused. As regards age of the prosecutrix, DW-2 and DW-3 have also stated that her age at the relevant time was in between 15 -16 years.

6. Thus in view of the aforesaid discussion, this Court is of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubts and therefore, the benefit of the same has to go to the appellant. Accordingly, the judgment impugned is hereby set aside and the accused/appellant is acquitted of all the charges levelled against him. Being already on bail, no order regarding his release etc. is necessary.
7. Appeal thus allowed.

Sd/-

(Vimla Singh Kapoor)
JUDGE