

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03.02.2020

Judgment delivered on 17.02.2020

Criminal Appeal No.1429 of 1999

Gajanand S/o. Dhaniram Verma, aged about 19 years, R/o. Bagbuda, Police Station Kasdol, Distt. Raipur (MP) (Now CG)

----Appellant

Versus

State of Madhya Pradesh (Now State of Chhattisgarh)

---Respondent

For appellant : Shri YC Sharma, Advocate
For respondent/State: Smt. Shubha Shrivastava, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. The appeal is directed against judgment dated 03.5.1999 passed by First Additional Sessions Judge, Baloda Bazar, Distt. Raipur (MP) (Now CG) in Session Trial No.340/1995 wherein the said Court convicted appellant for commission of offence under Sections 341, 376(1) and 506 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 01 month and to pay fine of Rs.500/-; RI for 07 years and to pay fine of 5000/- and RI for 02 years and to pay fine of Rs.1000/- respectively with default stipulation.

2. In the present case prosecutrix is PW-5. As per the version of the prosecution, on 10.6.1995 at about 12.00 noon, the prosecutrix was alone at her home at that time the appellant entered into the house, caught hold the prosecutrix by hand and committed sexual intercourse with her. The appellant also gave her threatening and thereafter ran away from the spot. Report was lodged after 12 days and the matter was investigated and after completion of the trial, he was convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Prosecutrix (PW-5) deposed (para 5) that after returning of the appellant from the place of incident, father of the prosecutrix asked her as to why the appellant came into their house, then the prosecutrix replied that the appellant was in search of her brother Mannu.

(ii) She further deposed that after 8-9 days of the incident, the appellant committed murder of her brother Mannu and the report against him was lodged after he was released from the jail for the charges of murder. Therefore, the prosecutrix was a consenting party.

(iii) The medical expert has not supported the version of the prosecution as the doctor did not find any mark of injury on the body of the prosecutrix.

(iv) The prosecution has failed to prove the age of the prosecutrix and looking to the enmity between the parties it appears that false report was lodged against the appellant.

(v) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

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

6. First question for consideration before this Court is whether the prosecutrix was minor on the date of incident. Dharam Das (PW-4) deposed before the trial Court that the prosecutrix is aged about 14 years, but he deposed (para 9) that he could not recollect the date of birth of his daughter. Birth certificate was not produced before the trial Court and Teacher Tulsidas Bachel (PW-

9) deposed before the trial Court that date of birth of the prosecutrix was not recorded on the basis of birth certificate, but the same was recorded on the basis of affidavit. The entry made in the school register is not made on the basis of the birth certificate of the prosecutrix, therefore, date of birth of the prosecutrix is not proved and also it is not proved that she was below the age of 18 years on the date of incident.

7. In the present case, date of incident is 10.6.1995 and the report was lodged on 22.6.1995 i.e. after 12 days. The prosecutrix deposed that after the incident, she did not narrate the incident to any one. This witness further deposed (para 5) that her father asked her as to why the appellant came to their house, then she replied that he was in search of her brother Mannu. She further deposed that her brother Mannu was killed by the appellant, he was arrested and later on he was released. She further deposed that after his release, she reported the matter to the police. From the statement of the prosecutrix, her version is not appears to be of sterling quality. On the date of incident, she did not narrate the incident to anyone. When her father asked about her the incoming of the appellant, she replied that he was in search of her brother Mannu which shows that she may be a consenting party. If the evidence of the prosecutrix inspires

confidence then no corroboration is required, but in the present case version of the prosecutrix is different at different stages and her version is not dependable and does not inspire confidence. Therefore, finding of the trial Court is not sustainable.

8. Accordingly, the appeal is allowed. Conviction of the appellant for the offence under Sections 341, 376(1) & 506B of the IPC is hereby set aside. He is acquitted of the said charges. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months from today as per the terms of Section 437A of CrPC.

Sd/-

(Ram Prasanna Sharma)

JUDGE