

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 882 of 2007

- Siraj @ Shivraj, S/o Manrakhan Patel, Aged about 40 years, R/o Dhamansara, P.S. Lalbagh, District Rajnandgaon (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through S.H.O. Lalbagh, District Rajnandgaon (C.G.)

---- Respondent/State

For Appellant	:	Shri Arvind Kumar Dubey, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

13.02.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 10.08.2007 passed by the First Additional Sessions Judge Rajnandgaon (C.G.) in Sessions Trial No. 12 of 2007, whereby the Appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 read with Section 511 of the Indian Penal Code (for short 'IPC')	R.I. for five years and pay a fine of Rs.1,000/-, in default of payment to further undergo S.I. for two months

2. Facts of the case in brief are that on 25.11.2006 at 19:30 hours, *dehatinalishi* (Ex.-P/1) was lodged in police station Lalbagh, Rajnandgaon by PW-1 Purnima Bai (mother of the prosecutrix-PW-8) informing that on 22.11.2006 at about 04:00 pm, when she reached her house, her daughter (prosecutrix PW-8) aged about 3 ½ years was complaining that she (PW-8) is having pain in her private part. On questioning the girl (PW-8) about the pain, she replied that father of Pintu has committed rape against her (PW-8).

PW-1 did not pay any attention to the complaint of PW-8 and thought that she might have been injured due to other reason. On the next day i.e. 23.11.2006 the prosecutrix (PW-8) was complaining about pain in her body during defecation and urination, she (PW-8) was taken to the physician for treatment at Rajnandgaon by PW-3 Dhanesh where Dr. Narendra Gandhi (PW-12) treated the prosecutrix (PW-8). As per Ex.-P/17, PW-12 found injury on the private of part of the prosecutrix in size of 1 cm x 1cm. Thereafter, the family of the prosecutrix called the panchayat, where the appellant has confessed his guilt that he had committed rape with the prosecutrix (PW-8). On the basis of *dehatinalishi* (Ex.-P/1), FIR (Ex.-P/9) was registered on the same day at about 23:00 hours at police station Lalbagh against the appellant under Section 376 of IPC.

3. Prosecutrix (PW-8) was medically examined by Dr. Shyamli Rai (PW-7) on 26.11.2006 and she gave her MLC report (Ex.-P/14) and as per MLC report (Ex.-P/14), no injury was found on the private part of the prosecutrix, no tenderness could be seen and hymen was intact.
4. During investigation, spot map (Ex.-P/2) was prepared. Written confession (Ex.-P/4) made before villagers by the appellant that he had committed rape against the prosecutrix was seized from Dhanesh (PW-3) vide seizure memo Ex.-P/5. The appellant was arrested on 26.11.2006 and his two memorandum statements (Ex.-P/10 & Ex.-P/12) were recorded consequent to which underwear of appellant and the prosecutrix which were kept in the house of the appellant were seized at the instance of the appellant vide Ex.-P/11 & Ex.-P/13. *Nazrinaksha* (Ex.-P/16) was prepared by Patwari Rajeev Shrivastava (PW-11). The queries were put to Dr. Shyamli Rai (PW-7) regarding sexual assault upon the prosecutrix by the police vide Ex.-P/15-A. As per Ex.-P/15, PW-7 in reply to queries has stated there is no evidence of forcible sexual intercourse; she did not find any injury in the private part

during examination on 26.11.2006 and she can explain about her examination only, not what anybody else has seen much earlier than her.

5. After completion of investigation, charge-sheet was filed by the police for the offence under Section 376 of IPC against the appellant/accused. While framing the charge, the First Additional Sessions Judge Rajnandgaon (C.G.) framed the charge against the appellant under Section 376(2)(f) of IPC which was denied by him and he prayed for trial.
6. So as to hold the accused/appellant guilty, the prosecution examined 14 witnesses namely Purnima (PW-1), Komal (PW-2), Dhanesh (PW-3), Dr. Rajesh Sadani (PW-4), Bhaiyalal Patel (PW-5), Yadram (PW-6), Dr. Shyamli Rai (PW-7), Chandni (prosecutrix PW-8), Khemu (PW-9), Rikhiram Patel (PW-10), Rajeev Shrivastava (PW-11), Dr. Narendra Gandhi (PW-12), R.P. Tiwari (PW-13) and P.L. Hirwani (PW-14) in support of its case. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No any defence witness has been examined on behalf of the accused/appellant. The appellant has stated in 313 CrPC statement that the villagers had assaulted him and got his signature on a blank-paper.
7. After appreciation of the evidence available on record, the learned First Additional Sessions Judge Rajnandgaon (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 376(2)(f) of IPC, convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment, hence this appeal.
8. Learned counsel for the appellant submits that as per MLC report (Ex.-P/14) given by Dr. Shyamli Rai (PW-7), no injury was found on the private part of the prosecutrix, nor any sign of sexual assault was found, therefore, benefit of doubt should be given to the appellant. He also submits that as per

evidence of Purnima (PW-1), on the next day of incident Dhanesh (PW-3) had taken the prosecutrix for treatment to Rajanandgaon before Dr. Narendra Gandhi (PW-12) and as per evidence of Dhanesh (PW-3), the incident happened on Wednesday and he took the prosecutrix after two days for her treatment before Dr. Narendra Gandhi (PW-12), therefore, the evidence of PW-1 (mother of the prosecutrix) and Dhanesh (PW-3) is not reliable. The trial Court has wrongly convicted and sentenced the appellant for the offence under Section 376 read with Section 511 of IPC.

9. On the other hand learned counsel for the State supporting the impugned judgment submits that as per memorandum statement of the appellant, he confessed before the villagers that he has committed or attempted to commit rape with the prosecutrix. He also submits that as per the evidence of Purnima (PW-1 – mother of the prosecutrix) and Dhanesh (PW-3), the prosecutrix was firstly taken for treatment to the hospital where Dr. Narendra Gandhi treated the prosecutrix and as per his report (Ex.-P/17), there was injury on the private part of the prosecutrix which were duly proved by the prosecution. Therefore, the trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by its impugned judgment which calls for no interference by this Court.

10. Heard counsel for the parties and perused the material available on record.

11. In this case, the prosecutrix (PW-8) aged about 3 ½ years child was firstly treated by Dr. Narendra Gandhi (PW-12) who stated in para-4 of his evidence that the injury found on the private part of the prosecutrix could be caused by attempt to rape or commission of rape. Dr. Narendra Gandhi (PW-12) treated the prosecutrix first on the next day of incident, therefore, there is no reason to disbelieve the evidence of PW-12.

12. PW-1 Purnima is the mother of the prosecutrix. She has stated that on the date of incident, she had gone to *badi* situated at her village for doing the

work. When she returned from *badi* at about 06:00 pm, her daughter (prosecutrix) was complaining of pain on her private part. When, she (PW-1) asked the prosecutrix as to whether she is hit by somethings, the prosecutrix told that "*Pinto ke babu (pitaji) ne uske kula (guptang) ko kochak diya*". The present appellant is the father of Pinto. PW-1 has stated that first she did not pay attention to the complaint of her daughter and thought that how can it be. PW-1 has further stated that on the next day, her daughter was feeling uncomfortable while passing urine. PW-1 has also stated that her brother-in-law (*jeth*) took the prosecutrix to Rajnandgaon before Dr. Narendra Gandhi (PW-12). Thereafter, Ex.-P/1 *dehatinalihsi* was lodged by PW-1 and as per Ex.-P/3, the prosecutrix was also examined with the consent of the parents. Spot map (Ex.-P/2) was prepared in presence of PW-1. PW-1 has also stated in para-12 of her deposition that the appellant admitted his guilt before the villagers namely Rajulal, Biselal, Roopsingh etc.

13. PW-3 Dhanesh has proved this fact as stated by PW-1. PW-3 had taken the prosecutrix to Nursing Home of Dr. Narendra Gandhi (PW-12). PW-3 has also stated that PW-12 examined the prosecutrix and said that he (PW-12) found injury on the private part of the prosecutrix which was also seen by PW-3 and PW-12 has given ointment, medicine etc. Thereafter, PW-3 returned to his home. PW-3 has also stated in para-6 that Ex.-P/4 is the confession made before the people by the appellant that he (appellant) has committed the offence which was seized by the police from the possession of PW-3. He (PW-3) has denied that the statement of the appellant was taken after beating the appellant.

14. PW-9 Khemu is the independent witness. PW-9 has clearly stated that PW-3 Dhanesh (elder father of the prosecutrix) has stated before the villagers that the prosecutrix was complaining of pain on her private part and he (PW-3) had taken the prosecutrix before the Doctor. PW-9 has further stated that

the appellant has admitted his guilt before the villagers that he has committed rape upon the prosecutrix and that confession is written in Ex.-P/4 which bears the signatures of the appellant and PW-9 as well as the villagers.

15. Looking to the evidence of PW-9 who is independent witness of confession made by the appellant before the villagers which was recorded in Ex.-P/4, the statement of Dr. Narendra Gandhi (PW-12) who gave his report Ex.-P/17 in which the injury was found on the private part of the prosecutrix, it is clear that the appellant has attempted to commit rape upon the prosecutrix. The incident happened on 22.11.2006, *dehatinalishi* (Ex.P/1) was lodged on 25.11.2006 by PW-1 Purnima (mother of the prosecutrix) after two days of the incident, on the basis Ex.-P/1, the FIR (Ex.-P/9) was registered under Section 376 of IPC. The reason explained in lodging the report after two days is that the prosecutrix was treated by the Doctor (PW-12), thereafter the appellant was called by the villagers and was asked about the incident, then the appellant confessed that he has committed rape upon the prosecutrix and after that the report was lodged against the appellant by the mother of the prosecutrix. The said reason appears to be just and proper and is, therefore, acceptable.

16. Definitely, there are some contradictions in the depositions of PW-1 Purnima and PW-3 Dhanesh, but this is not a reason to disbelieve the evidence of PW-1 Purnima and PW-12 Dr. Narendra Gandhi. Looking to the confessional statement made by the appellant before the villagers, there is no any evidence adduced by the appellant that he was beaten by the villagers to make confessional statement against him, nor any injury was found on the person of the appellant, nor any witness was examined in whose presence the appellant was beaten, it can not be said that the appellant has been falsely implicated in the crime in question. Being so, conviction of the

appellant under Section 376 read with Section 511 of IPC awarded by the trial Court appears to be just and proper warranting no interference by this Court.

17. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

18. In the present case, as per jail report received from Central Jail Durg (C.G.), accused/appellant Siraj @ Shivraj, S/o Manrakhan has completed his entire sentence and he has been released from jail on 18.11.2010 after extending benefit of remission provided by the State, therefore, there is no requirement for passing any order regarding his arrest, surrender etc. by this Court.

Sd/-
(Gautam Chourdiya)
Judge