

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1172 of 2013

Pawan Kumar Yadav S/o Deenuram Yadav, Aged about 26 years, R/o. Village Mainpur, Post Office and Police Station Gariyaband, District Gariyaband (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through the District Magistrate Gariyabandh, District Gariyaband (C.G.)

---- Respondent

For Appellant : Mr. Shivendu Pandya, Advocate.

For Respondent : Mr. Raghvendra Verma, Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

19.06.2020

Case of the prosecution in short is that on the basis of written report (Ex.P-7) given by father of the prosecutrix namely Maniram (PW-4) on 11.03.2012, FIR (Ex.P-8) was registered to the effect that on the date of incident i.e. 08.03.2012 at about 12 PM, his daughter (prosecutrix PW-12) aged about 7 years at the relevant time was taken away by the appellant to the cattle shed of Mangalram by giving Rs. 10/- and was subjected to rape by him. On seeing the bleeding from the private part of the prosecutrix, her mother asked her about the same, on which Danbai (PW-6) informed her that her daughter

(the prosecutrix) was sexually assaulted by the appellant. On medical examination of the prosecutrix by Dr. Snehlata Humane (PW-1) which was conducted on 11.03.2012 it was found that there was abrasion on her left leg, pubic hair was not present, reddishness was there in the periphery of her vagina and she was complaining pain on touching the private part. The doctor has further stated that even the little finger was not entering in vagina of the prosecutrix. After completion of investigation charge-sheet was filed against the accused/appellant under Sections 376, 511, 363, 342 IPC and 3 (1) (xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "**Act**"). However, the Court below framed the charge under Sections 363, 376 and 3(2) (v) and 3(1) (xii) of the Act.

2. Learned Court below vide judgment impugned dated 16.08.2013 passed in Special Sessions Trial No. 25/2012 acquitted the accused/appellant of the charge under the Special Act, but has convicted him under Sections 363 and 376 IPC with imposition of sentence of seven years RI with fine of Rs. 100/- under Section 363 and 10 years RI with fine of Rs.100/- under Section 376 IPC, plus default stipulations. Hence, this appeal.
3. Learned counsel appearing for the appellant submits that the judgment impugned convicting the accused/appellant under Sections 363 and 376 IPC is not based on proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. He submits that even the evidence of the prosecutrix and that of her father (PW-4 and

mother PW-5 respectively) do not get corroboration from the evidence of the witnesses examined by the prosecution. He submits that the accused/appellant has been implicated in a false case on account of some bore-well related dispute. He further submits that though the incident had taken place on 08.03.2012, the report came to be lodged on 11.03.2012 and no explanation to this 4 days delay has come forward by the prosecution.

4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court. Here, looking to the gravity of the offence committed to a girl aged about 7 years, no leniency is required to be given to the appellant.
5. Heard counsel for the parties and perused the material available on record including the judgment impugned.
6. The evidence of the prosecutrix (PW-12) looking to her age was first started in the question-answer form to ascertain her intelligence level to answer the questions put to her by the Court. She has correctly given the answers to almost all the questions regarding her name, place of residence, father's name etc., and thereafter further examination proceeded. In her evidence she has categorically stated that the accused/appellant had dragged her to the cattle shed, given her Rs.10/- and asked her not to disclose the incident to anyone. She has stated that on the date of incident it was Holi festival and at the

relevant time she was playing colours. She has further stated that factum of Rs.10/- being given to her by the accused/appellant was not disclosed by her to anyone including her parents. On a question being asked whether the accused/appellant had inserted his penis into her private part after taking her to the cattle shed, she has stated in affirmative. On a further question being put to her regarding the bleeding from her private part, here also she has stated in affirmative. In cross-examination she has categorically denied that she was stating the things on being tutored by her parents. She has further denied that after taking her to the cattle shed, the accused/appellant did nothing with her. She has reiterated that the date of incident being a Holi day she was playing colours at the relevant time along with her playmates. She has stated that after the incident she was medically examined. Mother of the prosecutrix namely Jaitbai (PW-5) has also supported the case of the prosecution and stated that on the date of incident when her daughter aged about 5-6 years at the relevant time was playing colours at the doorstep on account of it being the Holi day and that she was busy in cooking food in the kitchen, the accused/appellant - the resident of the same village had come to her house and taken her away to the cattle shed and subjected her to forcible sexual intercourse. She has further stated that after sometime her daughter got back home weeping and when she saw her private part bleeding and asked her about the same, she informed her that on account of being given Rs.10/- by the accused/appellant he had asked her not to narrate the incident to anyone. She has further stated that

the blood was wiped out by the clothes worn by the prosecutrix herself. She has further stated that after arrival of her husband the incident was narrated to him and with her consent, she (daughter) was medically examined. In cross-examination also she stood firm to what has been stated by her in the examination-in-chief. She has denied that the prosecutrix was not subjected to forcible sexual intercourse by the accused/appellant or that there was any bore-well related dispute between the accused and the father of the prosecutrix. Maniram (PW-4)- the father of the prosecutrix has also supported the case of the prosecution stating that on the date of incident the accused/appellant taking advantage of her loneliness, took his daughter (the prosecutrix) to the cattle shed and committed forcible sexual intercourse with her. He has further stated that after giving Rs.10/- to her, the accused/appellant had asked her not to disclose the incident to anyone. All this was disclosed to him by PW-4 as at the relevant time he was outside his house for celebrating Holi. After commission of the incident he consulted some villagers being Subhas and Yashpal as to the future course of action, but they had told him about straightaway lodging the report, and therefore, the report came to be lodged on 11.03.2012. Another witness namely Danbai (PW-6) who had seen the accused/appellant taking the prosecutrix to the cattle shed has also supported the case of the prosecution. She has specified that on being freed by the accused, the prosecutrix got back weeping and on being asked she told her that after giving Rs.10/-, the accused/appellant had asked her not make

disclosure to anyone. She has further stated that private part of the prosecutrix was bleeding and she was screaming in pain. Though in the cross-examination she took a somersault as to the fact that on seeing the prosecutrix being taken by the appellant to the cattle shed yet she has denied that nothing had happened on the date of incident and therefore only it took 3 days in lodgment of the report. As regards bleeding and screaming with pain by the prosecutrix has not been denied by this witness in the cross-examination. Seizure witness namely Raghunath Singh (PW-7) has also supported the case of the prosecution. Dr. Snehlata Humne (PW-1) who medically examined the prosecutrix has stated that pubic hair were not developed, there was redness in the periphery of her vagina, her hymen was missing and her vagina was not admitting even the little finger. She has opined that an attempt to sexual intercourse was made with the prosecutrix. As regards age, the school register pertaining to the prosecutrix marked as Article No. 4 records her date of birth as 14.02.2005. Looking to the school register seized under Ex.P-16 and the birth certificate seized under Ex.P-15 which show the prosecutrix to be aged about 7 years at the relevant time and that way the Court below has rightly held the prosecutrix to be minor on the date of incident. The prosecutrix being minor is further evident from the statement of the doctor PW-1 who has found the absence of pubic hair in her private part, redness in the periphery of her vagina and on touch she was complaining pain and not even the little finger entered her vagina. Thus there is no doubt in the mind of this Court that on the

date of incident it is the accused/appellant who made the prosecutrix an object of his lust and thus spoiled her chastity. As regards the delay of about 4 days in lodgment of report, there are several factors to be taken into consideration in such cases which are responsible for delay. In the cases where a minor girl is ravished, first of all the family members particularly her parents make a deliberation regarding the future prospects of the minor girl and probable blot which she would bear on her forehead throughout her lifetime. It has been held by the Hon'ble Apex Court in number of cases that such delay particularly in rape related cases should not be attached much importance particularly when the other witnesses remained consistent in stating the things. In this case all the witnesses including the prosecutrix have clearly put forth the ordeal in the form of physical exploitation of the prosecutrix in the same tone and tenor and therefore this Court does not see any scope in taking a different view to the one taken by the Court below.

7. In the result, for the reasons set out herein-above, the well reasoned findings holding the accused/appellant guilty under Sections 363 and 376 IPC do not require any interference by this Court. Conviction is thus maintained.
8. As regards sentence, the report received from the Superintendent, Central Jail, Raipur dated 20.05.2020 shows that after getting the benefit of remission, the accused/appellant has already been released

from the jail on 03.04.2020, therefore, no observation regarding the sentence part is required to be made by this Court.

9. Appeal is thus dismissed.

SD/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh