

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3143 of 1999

Reserved on : 23.01.2020

Delivered on : 20.02.2020

Firat (Firat) Ram, S/o Penkuram Sarthi, aged about 20 years, R/o Village-Kapan, Thana- Janjgir, District- Janjgir-Champa (M.P.) (Now C.G.)

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh), through the District-Magistrate Korba (M.P.) (Now C.G.)

---- Respondent

For Appellant : Mr. Alok Dewangan, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 14.10.1999 passed by Additional Session Judge, Korba, District- Korba (M.P.) (Now C.G.) in Session Trial No. 256/1994, wherein the said court convicted the appellant for commission of offence under Section 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 1000/- with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, the appellant assured minor prosecutrix to marry with her and committed sexual intercourse with her. Due to maintaining physical relation, the prosecutrix carried pregnancy and thereafter, one Panchayat was convened. In the Panchayat, the appellant denied

the allegation that is why report was lodged against the appellant as per Ex. P/7. The matter was reported and investigated, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Age of the prosecutrix is not proved to be below 18 years because no ossification report was filed in the trial court.

(ii) Entry made in the birth certificate is not conclusive certificate of date of birth.

(iii) Delay of 8 months in lodging the report is not explained in the present case, therefore, case of the prosecution is doubtful.

(iv) The trial court has not evaluated the evidence of defence witnesses while there was material contradiction and omission in statement of the prosecution witnesses, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

4. I have heard learned counsel for the parties and perused the records.

5. First question for consideration before this Court is whether the prosecutrix was minor on the date of incident that is before 19.07.1994. Lalharam (PW-4) is father of the prosecutrix. As per version of this witness, date of birth of the prosecutrix is 29.05.1979.

Jailal (PW-5) is Kotwar who deposed on the basis of birth register that the date of birth of the prosecutrix is 29.05.1979. From statement of Kotwar- Jailal (PW-5) and father of the prosecutrix Lalharam (PW-4), it is proved that the date of birth of the prosecutrix is 29.05.1979 while the date of incident is prior to 19.07.1994. On the said date, age of the prosecutrix comes out to 15 years and 2 months.

6. As per version of the prosecutrix (PW-1), she was working in house of the appellant and on promise of marry, he committed sexual intercourse with her. Version of this witness is unrebutted during cross-examination and it is further supported by version of Anjor Singh (PW-2), Lalharam (PW-4) & Ganesh Ram (PW-6). Again, it is supported by defence witnesses namely Daduram (DW-1), Tikaitram (DW-2) & Jethuram (DW-3). All the prosecution witnesses and defence witnesses have been established that the prosecutrix conceived due to sexual intercourse by the appellant.
7. Now, the point for consideration before this Court is whether the act of the appellant falls within mischief of rape. The law prevailing at the time of commission of offence i.e. Section 375(6) of IPC, the sexual intercourse with a woman with her consent when she is under 16 years of age, is rape as defined in the said Section. In the present case, it is clearly established that the prosecutrix was below 16 years of age, therefore, her consent is immaterial. From evidence of Dr. Swati Sisodiya (PW-10), she examined the prosecutrix and found her carrying pregnancy of 32 weeks. Dr. A.R. Porte (PW-3) examined the appellant and found him capable of intercourse.

8. There is nothing on record to say that the appellant has been roped in false charge. There is also nothing on record to say that the prosecutrix has falsely implicated the appellant of ravishing her chastity by sacrificing and jeopardizing her future prospect. Version of the prosecutrix is inspiring confidence and the same is with ample corroborative piece of evidence. The prosecutrix and her family member did not report the matter because there was possibility of marriage with the prosecutrix and the appellant, but when he refused to marry with the prosecutrix and denied the allegation, the matter was reported. There are several factors which weigh in mind of the prosecutrix and her family members before coming to the police station to lodge the report. When the appellant denied the allegation, after giving it serious thought, they decided to lodge the report, therefore, case of the prosecution cannot be thrown out merely on the basis of delay in lodging the report. In view of the above, the argument advanced on behalf of the appellant is not sustainable.
9. The trial court elaborately discussed the entire evidence and recorded finding of conviction and after reassessing the same, this Court has no reason to record contrary finding. The act of the appellant falls within mischief of Section 376 (1) of IPC, 1860 for which the trial court convicted the appellant and his conviction is hereby affirmed.
Heard on the point of sentence.
10. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also

not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

11. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 31st August, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun