

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 07-02-2020

Delivered on 17-02-2020

CRA No. 192 of 2001

- Rakesh son of Dharmu Mehtar, aged about 20 years, resident of Mehtarpara, Kharsia, District Raigarh, CG.

---- Appellant.

Versus

- The State of Chhattisgarh

---- Respondent

For Appellant	:	Mr. Govind Dewangan, Advocate
For Complainant	:	Mr. Tarun Dansena, Advocate.
For respondent/State	:	Mr. Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 5-1-2001 passed by the First Additional Sessions Judge, Raigarh (CG) in Sessions Trial No. 19 of 2000 wherein the said Court has convicted the appellant for commission of offence under Sections 376(1), 366 and 342 of IPC, 1860 and sentenced him to undergo rigorous imprisonment for seven years, RI for two years and RI for three months. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/18. As per version of prosecution, on the date of incident i.e., in the intervening night of 8th & 9th November, 1999 appellant kidnapped the prosecutrix from the lane of Gharsiapara, Kharsia while prosecutrix after watching TV in her brother's house, was going to her house and committed sexual intercourse with her without her consent and against her will. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) PW/17 Ku. Sumita Bharati, who is a teacher, deposed before the trial court that entry in the school register is not made by her, therefore, from her statement date of birth of prosecutrix is not proved to be 5-5-1988.
- ii Prosecutrix is a consenting party and she deposed (para 6) before the trial court that her parents have scolded her and prevented her for having conversation with the appellant.
- lii) Medical evidence is not supporting the version of prosecution, therefore, finding of

the trial court is not sustainable.

- iv) Then trial court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

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

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 9-11-1999 and report was lodged on the same day in Police Station naming the appellant as culprit and his act of rape is also mentioned in the said report. There is no delay in lodging the first information report.

7. The question for consideration of this court is whether the prosecutrix was minor on the date of incident. PW/6 Dr. M.D. Joshi examined the prosecutrix and after x-ray he found that age of the prosecutrix is between 14 – 15 years. PW/7 Sony is mother of the prosecutrix. As per version of this witness, age of the

prosecutrix is 13 years. As per version of Teacher Ku. Sumitra Bharati (PW/17), date of birth of the prosecutrix is mentioned in the school register as 5-5-1988. Taking into consideration the statement on oath by the mother of the prosecutrix and in support of other evidence, prosecutrix was minor on the date of incident . The statement of mother of the prosecutrix is significant because she delivered the child and her version is supported by other records and ossification test.

8. Prosecutrix (PW/18) deposed before the trial court that she was returning at night from the house of her brother after watching TV towards her house and at the same time, appellant came and pressed her mouth, threatened her and took her to a house which was under construction and thereafter he committed forceful sexual intercourse with her and threatened her. Version of this witness is unrebutted during cross examination. Some letters were produced during cross examination of prosecutrix, but she clearly deposed that those letters were not written by her out of her will. From her entire evidence, there is nothing to say that she was a consenting party. When her age was below 13 years on the date of incident, she was not competent to give consent. Version of this witness is supported by version of her mother Soni (PW/7), Kanobai (PW/8) and Gayatri (PW/9) to whom the incident was informed.

9. In the present case no delay is caused in lodging the report. Prosecutrix is firm in lodging the report and informing about the incident which shows that she was not a consenting party. No girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence is not suggestive of consent on the part of prosecutrix.

10. Taking into totality of the facts, when statement of the prosecutrix is inspiring confidence, no corroboration is required, but in the present case, there is ample corroborative piece of evidence to the statement of the prosecutrix. There is no material contradiction in the statement of prosecutrix, her daughter and her husband and all have deposed in one voice and therefore, it is not the case where material contradiction is established. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution. The act of the appellant falls within mischief of Sections 376(1), 366 and 342 of the IPC for which the trial court convicted him and same is hereby affirmed.

11. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. The trial court awarded seven years for offence of rape under Section 376 (1) of IPC which is minimum prescribed and less than

minimum cannot be awarded. Sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 31-7-2020

Sd/-
(Ram Prasanna Sharma)
Judge

Raju