

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 453 of 2009

- Yeeshu Kumar @ Yeeshu Lohar, S/o Sukhau Ram Lohar, aged about 19 years, Occupation Wagery, Resident of Village Themli, Police Station Sihawa, District Dhamtari (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through The P.S. Sihawa, Distt.-Dhamtari (CG)

---- Respondent

For Appellant	:	Ms. Pragya Pandey, Advocate.
For Respondent/State	:	Mr. Vimlesh Bajpai, Govt. Advocate.

Judgment On Board By Justice Gautam Chourdiya

30/06/2020

The matter is heard through video conferencing.

02. When the matter is taken up for hearing, none is present for the appellant to argue this appeal. Hence, considering the facts and circumstances of the case, in particular the long pendency of the appeal, this Court deems it appropriate to appoint a counsel from the High Court Legal Services Committee to represent the appellant.

03. Ms. Pragya Pandey, Advocate, one of the empanelled lawyers of the High Court Legal Services Committee, on being asked by this Court is ready to argue the matter. Hence, Ms. Pandey is appointed as a counsel for the appellant in this case. Registry is directed to inform the High Court Legal Services Committee in this regard for doing the

needful.

04. This appeal arises out of the judgment of conviction and order of sentence dated 01st April, 2009 passed by the Special Judge {Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act}, Dhamtari (CG) in Special S.T.No.21/2008 convicting the accused/appellant under Sections 376(1) and 506(B) of IPC and sentencing him to undergo RI for five years, to pay a fine of Rs.500/- and RI for one year, to pay a fine of Rs.100/- with default stipulations respectively.

05. Case of the prosecution, in brief, is that on the date of incident i.e. 22.5.2008 at 12 in the night the prosecutrix went out of her home towards a lane for attending the call of nature. At that time, the accused/appellant came there, caught hold of the prosecutrix and took her to a nearby Primary School where on the threat of life he forcibly committed sexual intercourse with her. Thereafter, while the appellant was going along with the prosecutrix, on the way they met villagers namely Dinesh, Banshi Deenbandhu and Devchand Gond. On being asked by these villagers, the prosecutrix informed them about the incident of rape with her by the appellant. On this, the appellant fled from there. Thereafter, the above villagers took the prosecutrix to her home where she informed about the incident to her parents and then report was lodged by her at the police station on 24th May, 2008 vide Ex.P/16. During investigation, vide Ex.P/2 caste certificate of the prosecutrix was seized and as per Ex.P/3 underwear of the prosecutrix was seized. Vaginal slide of the prosecutrix was seized vide Ex.P/4.

Underwear of the appellant was also seized vide Ex.P/4A. Spot map Ex.P/7 was prepared. Marksheet of the prosecutrix was seized vide Ex.P/12. The prosecutrix was medically examined on 24.5.2008 by PW-8 Dr. Asha Tripathi vide Ex.P/14 who noticed following injuries on the person of the prosecutrix:

“swelling over both arms, there was pain on touching, caused by hard and blunt object, abrasion over left cheek, size 1.5 cm shape with dark brown scab, appeared to be caused by nails, another abrasion on left cheek, size $\frac{1}{2}$ cm with dark brown scab, dark brown firm scab present over right arm postero-lateral aspect abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ cm and just adjacent another abrasion $\frac{1}{3}$ cm x $\frac{1}{2}$ cm. Both abrasions had dark brown scab. All the abrasions were caused within 2-3 days. There was injury on her right arm caused by hard and rough object. All injuries were simple in nature.

On internal examination, the doctor noticed that there was a few hair on her private parts, breasts were not fully developed, labia majora and minora were also not fully developed, there was reddishness in vulva, hymen was not ruptured.

In the opinion of the doctor, hymen was intact but vulva reddish, partial penetration of penis may have taken place. For final opinion, vaginal slides were prepared, sealed and handed over to constable for chemical examination.

06. PW-8 Dr. Asha Tripathi also examined the seized underwear of the prosecutrix vide Ex.P/15 on which she found certain white spots, which were marked, sealed and handed over to police constable for chemical examination. The accused/appellant was also medically

examined by PW-14 Dr. GR Agrawal vide Ex.P/25A and he found the appellant capable of performing sexual intercourse. After completion of investigation, charge sheet was filed under Sections 376 of IPC and 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short "the Act") against the appellant. The trial Court framed charges under Sections 376(1), 506B of IPC and Section 3(1)(xii) of the Act against the appellant, which were denied by him and he prayed for trial.

07. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was 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. He states that as the villagers have enmity with him, he has been falsely implicated. No defence witness was examined by the appellant.

08. The trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

09. Learned counsel for the appellant submits that in this case the prosecutrix was not below the age of 16 years and looking to her age, it appears that she was a mature girl and as per prosecution case itself, she went out of her home in the night at 12, which shows that she was a consenting party. The prosecutrix was not raising any hue and cry for help whereas according to her, her parents were sleeping in

the nearby place. There is no eyewitness to the incident. Due to enmity of the villagers with the appellant, he has been falsely implicated in this crime. Further, there is unexplained delay of two days in lodging the FIR whereas the police station is only about 19 km away from the place of occurrence. The prosecutrix was above 16 years of age but in the FIR her age is wrongly mentioned as 12 years. There are major contradictions and omissions in the statements of the prosecution witnesses which have not been properly appreciated by the trial Court. Hence the impugned judgment is liable to be set aside.

10. On the other hand, supporting the impugned judgment learned counsel for the State submits that there is no enmity of the prosecutrix or the villagers with the appellant. The prosecutrix was a minor girl who was subjected to forcible sexual intercourse by the appellant under threat of life. Medical evidence also supports her version. Delay in lodging the FIR has been properly explained that since it was night and there was no availability of conveyance, the FIR could not be lodged in time. Even otherwise, mere delay in lodging the FIR is not sufficient to reject the whole prosecution case which is otherwise reliable and supported by the evidence on record. Therefore, there is no need to interfere with the findings of the trial Court.

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

12. PW-11 prosecutrix has stated that at about 12 in the night when she went out of her home for attending the call of nature, the appellant gagged her mouth, took her to a school and there committed rape

upon her on the threat of life. While they were returning, Dinesh, Banshi, Devchand etc. met them and the appellant fled from there. After reaching home, she narrated the incident to her parents and thereafter, FIR was lodged against the appellant vide Ex.P/16. She states that as per Ex.P/3 her underwear was seized. There is no major contradiction or omission shown in her cross-examination. The fact narrated in the FIR is proved by the prosecutrix in her deposition. No any previous enmity with the prosecutrix or any reason shown by the accused for his false implication.

13. Just after the incident the prosecutrix narrated about the incident to her parents PW-1 Manglu and PW-2 Mainibai who have also stated the same facts as stated by the prosecutrix. PW-4 Antram Nishad has proved the spot map Ex.P/7. PW-6 Banshi also states that when the prosecutrix met him, the appellant was also there and that the prosecutrix informed him about the rape committed by the appellant with her. PW-10 Makhanlal, brother of the prosecutrix, in para-2 also states that later he came to know that the appellant has committed forcible sexual intercourse with his sister/prosecutrix. The deposition of the prosecutrix also finds due support from the medical evidence of PW-8 Dr. Asha Tripathi who examined her on 24.5.2008 vide Ex.P/14 and noticed certain injuries as mentioned in the preceding paragraph.

14. So far as delay in lodging the FIR is concerned, the FIR has been lodged with a delay of about two days and the reason offered therefor is that since it was night and conveyance was not available, the FIR could not be lodged in time. The law is well settled that delay in

lodging the FIR in an offence of rape is a normal phenomenon as the FIR is lodged after deliberation. It takes some time to overcome the trauma suffered, the agony and anguish that create the turbulence in the mind of the victim, to muster the courage to expose one in a conservative social media, to acquire the psychological inner strength to undertake a legal battle against the culprit. Therefore, in the given facts and circumstances of the case, delay in lodging the FIR cannot be said to be fatal to the prosecution case.

15. As per Primary School Marksheet of the prosecutrix (Ex.P/20), her date of birth is 9.6.1991 and as such, on the date of incident she was about 17 years of age. Thus, considering the evidence adduced by the prosecution in support of its case, it stands proved that it is the accused/appellant who forcibly committed sexual intercourse with the minor prosecutrix on the threat of her life. As such, the conviction of the appellant under Sections 376(1) and 506B of IPC recorded by the trial Court and the sentence awarded thereunder are just and proper warranting no interference by this Court.

16. In the result, the appeal being devoid of any substance is liable to be dismissed and is, accordingly, dismissed. As per jail report dated 11.6.2020 available on record, the appellant was released from jail after payment of fine amount and getting benefit of remission on 4.4.2012. Therefore, there is no need to pass any order regarding his arrest, surrender etc.

Sd/
(Gautam Chourdiya)
Judge