

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1176 of 2002

- Isi Ram S/o Kapoor Chand, aged about 18 years, caste Rawat R/o Village Koukadimal-Khar, Police Station Devbhog, Distt. Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh through PS Devbhog, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Mr. Pritam Tiwari, Advocate.
For Respondent/State	:	Mr. Anand Verma, Dy. GA

Judgment On Board By Justice Gautam Chourdiya

19/06/2020

This appeal arises out of the judgment of conviction and order of sentence dated 11.10.2002 passed by the First Additional Sessions Judge, Raipur (CG) in S.T.No.267/2002 convicting the accused/appellant under Section 376 of IPC and sentencing him to undergo RI for seven years and to pay a fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that FIR (Ex.P/1) was lodged by the prosecutrix on 1.6.2002 at 19:00 hours alleging therein that the accused/appellant forcibly committed sexual intercourse with her many times on the allurements and promise of marriage due to which she became pregnant. During investigation, statements of the prosecutrix, Gataram, Shriram and other witnesses were recorded. The prosecutrix

was sent for medical examination, on which it was found that she was carrying pregnancy of 32 weeks, no external injury was seen on her person, her vagina admitted two fingers easily. Two vaginal slides were prepared and sealed. MLC of the prosecutrix is Ex.P/9. The accused/appellant was also medically examined vide Ex.P/3 and was found capable of performing sexual intercourse. As per Ex.P/10, the radiological age of the prosecutrix was found 16 years. As per Birth & Death Report Form, date of birth of the prosecutrix is mentioned as 28.12.1988 vide Ex.P/13C. After completion of investigation, charge sheet was filed under Section 376 of IPC against the appellant followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 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. However, he admitted that a panchayat meeting was convened in connection with the incident. No defence witness was examined by the appellant.

04. 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 in para-1 of this judgment.

05. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case without there being any cogent and reliable evidence. The statements of the prosecution witnesses including the statement of the prosecutrix, suffer from contradictions

and omissions and as such are not reliable. Hence the trial Court has wrongly convicted and sentenced the appellant which is liable to be set aside.

06. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

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

08. PW-1 prosecutrix has stated in her deposition that when she was going towards the forest for grazing her cattle, the accused/appellant forcibly committed sexual intercourse with her on the allurements and promise of marriage. She submits that the appellant committed sexual intercourse with her many times on the said promise and when she became pregnant due to such sexual intercourse by the appellant, she informed about the same to her parents. Thereafter, a village panchayat was convened where the appellant refused to marry her and then FIR (Ex.P/1) was lodged by her. In cross-examination, the prosecutrix remained firm and reiterated as to the manner in which she was subjected to forcible sexual intercourse by the appellant on the promise of marriage. There is no reason to disbelieve the statement of the prosecutrix because there is no major contradiction or omission in her statement.

09. The prosecutrix was aged about 13-14 years as stated by her father PW-2 Shalikram. He has also supported the contention of the

prosecutrix that she when became pregnant through the appellant, the matter was raised before the Village Panchayat and after refusal by the appellant to marry the prosecutrix, the FIR was lodged by her.

10. PW-4 Smt. Gangabai, mother of the prosecutrix, also states that the prosecutrix is about 14 years of age. She supports the contention of the prosecutrix that while she was grazing cattle, the appellant committed forcible sexual intercourse with her on the promise of marriage. PW-6 Shriram Dhobi has also supported the version of the prosecutrix and stated that the prosecutrix informed him that the appellant has committed rape upon her and thereafter, Village Panchayat was convened. He also states that age of the prosecutrix is about 14 years. There is no major contradictions or omissions in the statements of PW-2 Shalikram, PW-4 Smt. Gangabai and PW-6 Shriram Dhobi which could render their evidence untrustworthy or unreliable.

11. PW-7 Kheer Singh, Sarpanch of the village, states in examination-in-chief that looking to the age of the prosecutrix, he refused to make any settlement between the appellant and the prosecutrix and suggested that the prosecutrix should inform about the incident to police. Thereafter, along with Village Kotwar, the prosecutrix and her father were sent to police station.

12. PW-10 B. Bara medical examined the prosecutrix vide Ex.P/9 and found that she was carrying 32 weeks pregnancy. However, there was no injury on her person. For age determination, x-ray was done and as per x-ray report, her radiological age was found about 16 years

vide Ex.P/10.

13. PW-11 Mehatar Ram, Village Kotwar, has proved Ex.P/13 i.e. Birth & Death Report Form by stating that date of birth of the prosecutrix is 28th December, 1988 and entry is made on 2nd January, 1989. Therefore, from the above evidence it stands proved that on the date of incident the prosecutrix was below 16 years of age.

14. Thus, considering the entire evidence adduced by the prosecution, in particular the evidence of the prosecutrix which is duly supported by the medical evidence, this Court is of the opinion that the prosecution has successfully proved the guilt of the appellant beyond all reasonable doubt. Being so, the trial Court was fully justified in convicting and sentencing the appellant under Section 376 of IPC.

15. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per jail reports available on record, the appellant was released from jail after serving out the entire sentence, however, on the basis of order passed by this Court, he was again sent back to jail. Hence the appellant is directed to be released forthwith.

Sd/

(Gautam Chourdiya)

Judge