

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 394 of 2003**

1. Bhagwat Sahu, aged about 25 years, S/o Nandaram Sahu, R/o Village Parsada, Police Station Old Bhilai, District Durg (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station Old Bhilai, District Durg (C.G.)

---- Respondent

For Appellant	:	Shri Jameel Akhtar Lohani, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****31/08/2020**

- 1) The matter is heard through Video Conferencing.
- 2) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 05/03/2003 passed by Sessions Judge, Durg, District Durg (C.G.) in Session Trial No. 286/2002; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 376 read with Section 511 of Indian Penal Code (in short "IPC")	R.I. for 1 year & fine of Rs. 1,000/- in default of fine additional R.I. for 3 months.

- 3) Case of the prosecution in brief is that on 30/11/1999 at about 04.30 P.M. at village Parsada while prosecutrix aged about 06 years reached at the house of the accused appellant for demanding ash, at that time accused appellant was alone in house. Accused appellant removed the clothes of the prosecutrix and himself, laid her on the cot and attempted to commit sexual intercourse with her. When prosecutrix returned home, she was

crying and narrated the whole incident to her mother PW-02 Smt. Uttara Bai. Her mother PW-02 examined the clothes and private part of the prosecutrix and noticed swelling and blood over her clothes and private part. When husband of PW-02 namely Sushil Kumar Sahu (PW-01) returned at night, she narrated the story to him. Next day, they went to Police Station O.P. Kumhari Old Bhilai to lodge complaint against the appellant on which zero numbered FIR Ex. P-1 was registered and subsequently the said FIR being transferred to Police Station Purani Bhilai numbered FIR Ex. P-14 was registered against the accused on 01/12/1999 at 10:00 AM.

- 4) During investigation the clothes of prosecutrix i.e one frock and one undergarment were seized vide Ex. P-2. After obtaining consent from father of the prosecutrix vide Ex. P-5, she was medically examined by Dr. Smt. Padmini Singhi (PW-07) and she submitted her report vide Ex. P-3. The doctor found redness between the perineum and the thighs with pain and swelling around the same, hymen was intact but there was swelling and pain. According to the doctor, no definite opinion regarding forcible sexual intercourse could be given but it appeared that attempt to commit intercourse would have been made because there was swelling with pain and redness between the perineum and the thighs. Vaginal slides were prepared, sealed and handed over to the constable for chemical examination. Spot map Ex. P-6 was prepared by Patwari and spot map Ex. P-8 was prepared by I.O. The seized articles i.e. frock, undergarments of the prosecutrix and her vaginal slides were sent for chemical examination to FSL vide Ex. P-11 and as per FSL report vide Ex. P-12, blood was found on articles A, B & C. After due investigation charge-sheet was filed against the accused/appellant for the offence punishable under Section 376 of IPC.
- 5) The Trial Court framed charges against the accused/appellant under Section 376(2) of IPC alternatively under Section 376/511 of IPC which was denied by him and he prayed for trial.

- 6) The prosecution in support of its case examined as many as 08 witnesses namely PW-01 Sushil Kumar Sahu (Father of prosecutrix), PW-02 Uttrabai (Mother of the prosecutrix), PW-03 Shyambai, PW-04 Prosecutrix, PW-05 Ramnaresh Tandon (Patwari), PW-06 Rajiv Sharma (S.I.), PW-07 Dr. Padmini Singh (Medical Officer) and PW-08 Manharan Lal (Constable). The statement of the accused was also 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. DW-01 Trilochan was examined by the accused in his defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in para 2 of this judgment.
- 8) Learned counsel for the appellant submits that the learned Trial Court has not properly appreciated the evidence of prosecution. Looking to the spot map Ex. P-8 it is clear that the spot mentioned therein is not the house of the appellant. Further, looking to the contradictory statement of prosecutrix herself and her parents, offence under Section 376 read with Section 511 of IPC was not made out as not ingredients of the said offence was proved by the prosecution.
- 9) He further submits that as per medical evidence, the hymen of the prosecutrix was intact, no any sign of sperm in the clothes or private part of the prosecutrix was found. So far as the injury found on her person is concerned, she was a child, aged about 6 years, and while playing she sustained injury. Therefore, the learned Trial Court wrongly convicted and sentenced the appellant and he deserves to be acquitted.
- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that in this case, there was a prompt report in the next morning after the incident, the prosecutrix is a 6 years child, her version is duly supported

by the evidence of her parents (PW-2 & PW-3) as well as the medical evidence. Therefore, the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-04 Prosecutrix, aged about 06 years, has stated in her deposition that on 30/11/1999 at around 04:30 PM when she went to the house of the accused appellant for demanding ash, at that time accused removed her undergarment and removed his undergarment, laid her on the bed and did bad work with her. After returning her house, she narrated the whole incident to her mother. Her mother PW-02 Smt. Uttara Bai checked and examined the clothes and private part of the prosecutrix, and found swelling and blood over her private part and clothes. It is not disputed by both the counsel for the parties that the prosecutrix was below the age of 8 years. She has also stated that blood was oozing from her private part when accused attempted to commit sexual assault on her. She has categorically denied the suggestion that injury found on her body was caused while she was playing. Looking to the entire statement of PW-04 prosecutrix, her statement appears to be trustworthy and there is no reason to disbelieve her. Statement of the prosecutrix is also supported by PW-01 father of prosecutrix and PW-02 mother of the prosecutrix.
- 13) PW-01 father of the prosecutrix has proved the FIR lodged by him on the next day morning after the incident and he stated that he returned from his job/office at night at about 10:00 PM and in the morning at about 05:30 AM his wife informed him that when the prosecutrix had gone to the house of the appellant for demanding ash, the appellant committed sexual assault upon the prosecutrix. There is no delay in FIR Ex. P-1 which was lodged by PW-01 father of the prosecutrix and there is no

contradiction and omission in his statement. Statement of the prosecutrix is also supported by the evidence of her mother PW-02.

- 14) PW-03 Shyambai states that she was informed by PW-2 Smt. Uttara Bai that on the date of incident at about 04:30 PM prosecutrix was subjected to the sexual assault by the appellant and that she (PW-03) found blood on the clothes of the prosecutrix.
- 15) Thus, it is clear from the evidence on record that soon after the incident, PW-03 informed about the same to her husband PW-01 Sushil Kumar Sahu and her neighbour PW-03 Shyambai who have supported the case of the prosecution. Evidence of the prosecutrix is also supported by the promptly lodged FIR by her father as well as the medical evidence in the form of MLC (Ex.P/3) which has been duly proved by the treating doctor PW-07 Dr. Padmini Singh. This apart, the FSL report (Ex.P/12) also lends corroboration to the evidence of the prosecutrix, according to which blood was found on the frock, underwear and vaginal slides of the prosecutrix. In these circumstances, there is no reason to disbelieve the statement of the prosecutrix. No any probable reason was shown by the appellant for his false implication in this case by the family members of the prosecutrix.
- 16) Defence witness DW-01 Trilochan has stated that at the time of incident the accused was working in the filed and due to property dispute he was falsely implicated but no corroboratory evidence was adduced by the accused to prove that due to property dispute he was falsely implicated. DW-01 Trilochan has stated that there is dispute between Nanda (father of the accused) and father of the complainant Sushil Kumar for the last 10-15 years but no such document was produced nor any evidence adduced by the defence before the Trial Court in this regard. PW-01 Sushil Kumar has denied that he has any dispute regarding the property with the father of the appellant. Therefore, the defence of false implication of the accused due to property dispute being

without substance is of no help to him.

- 17) Thus, considering the facts and circumstances of the case, the evidence of the prosecutrix, which finds due corroboration from the evidence of PW-01 Sushil Kumar Sahu, PW-02 Uttrabai, PW-03 Shyambai and PW-07 Dr. Padmini Singh as also the FSL report vide Ex. P-12 and the FIR vide Ex. P-1 lodged by the father of the prosecutrix, this Court finds that the prosecution has been successful in proving the guilt of the appellant beyond all reasonable doubt. As such, the trial Court has rightly convicted and sentenced the appellant under Sections 376/511 of IPC. There is no substance in this appeal and it is liable to be dismissed.
- 18) In the result, the appeal being without any substance is hereby dismissed. Since the appellant is reported to be on bail, his bail bonds stands cancelled and he is directed to surrender before the Trial Court to serve out the remaining part of the sentence.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant