

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 352 of 2007**

- Ashok Kumar, son of Bansilal Kandara (wrongly written "Gond") aged about 21 years, Occupation agricultural Labour, residence of Village Taraud, (Bhatapara), Police Station Balod, District- Durg, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh, Through Station House Office, Police Station Balod, District- Durg, (Chhattisgarh).

----Respondent

For Appellant	:Shri Vipin Tiwari, Advocate
For Respondent/State	:Shri Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

17.02.2020

(1) When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the High Court Legal Service Committee to represent the appellant.

(2) On being asked from Shri Vipin Tiwari, who is one of the empanelled lawyers of High Court Legal Service Committee in this regard, he is ready and willing to argue the matter. Therefore, in the interest of justice, Shri Vipin Tiwari, who is one of the lawyers in the panel of High Court Legal Service Committee, is appointed as counsel to represent the appellant.

(3) Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

(4) This appeal is directed against the judgment of conviction and order of sentence dated 16.03.2007, passed by Additional Sessions Judge, Balod District- Durg (C.G.) in Sessions Trial No. 239/2006, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
Under Section 342 of Indian Penal Code	Rigorous imprisonment for six months.
Under Section 376 (1) of Indian Penal Code	Rigorous imprisonment for 7 years & fine of Rs. 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment of 1 year.
Under Section 506 (II) of Indian Penal Code	Rigorous imprisonment for 1 year & fine of Rs. 1,000/-, in default of payment of fine, to further undergo rigorous imprisonment of 6 months.

	All the sentences were ordered to run concurrently.
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(5) Case of the prosecution, in brief, is that the prosecutrix lodged FIR (Ex.P-7) on 01.07.2006 alleging therein that prior to six months of lodging the FIR at about 10.00 a.m. prosecutrix (PW-07), aged about 15 years, went to the house of the appellant to meet her friend – Suka Bai, who is sister of the present appellant, but her friend was not available at home and accused/appellant was present in the house. At that point of time, appellant closed the door from inside and caught hold of her and forcibly committed sexual intercourse with her against her will and threatened her that if she discloses the incident to anyone, he will kill her. Due to the said incident, the prosecutrix got pregnant and when she asked the appellant to marry her, he refused to do so and after his refusal, the prosecutrix narrated the entire incident to her father and immediately thereafter the FIR (Ex.P-7) was lodged on 01.07.2006 against the appellant/accused. Medical examination (Ex.P/1) of the prosecutrix was conducted by Dr. (Smt.) S. Cladias (PW-01), in which, she found that the prosecutrix is carrying pregnancy of approximately 26 weeks. She advised for sonography and the sonography report vide Ex. P/09 showed the pregnancy of the prosecutrix. Accused/appellant was also examined by Dr. R. K. Gore (PW- 11) and medical report of the accused/appellant is Ex.

P/13-A.

(6) After usual investigation, charge-sheet was filed against the accused appellant under Section 376 of the Indian Penal Code.

(7) After filing of the chargsheet, the trial Judge framed charge against the accused under Sections 342, 376 (1), 506 (B) of the Indian Penal Code. Accused denied the charges levelled against him and prayed for trial. The prosecution examined as many as 12 witnesses in support of its case namely Dr. S. Cladias (PW-1), Keju Singh` Thakur (PW-2), Netram (PW-3), Anil Kumar Thakur (PW-5), Dr. A. K. Sahu (PW-6), prosecutrix (PW7), Ram Singh (PW8), Milendra Kumar (PW9), Suryabhan Maishram (PW10), Dr. R. K. Gore (PW11) and Balram Singh Sahu (PW12). Statement of the accused is also recorded under Section 313 of Cr.P.C in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. In support of his case, two defence witnesses namely- Rajauram (DW-1) and Uttra Singh (DW-2) have been examined.

(8) Learned trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicted and sentenced the appellant as mentioned in para four of this judgment.

(9) Learned counsel for the accused/appellant would submit that the accused has been falsely implicated in the crime in question as

there is no evidence available on record to connect the appellant with the crime in question and the prosecutrix is a consenting party to the act of the appellant. He submits that marriage of the prosecutrix was fixed to one person namely Gandlal, but when he (Gandlal) came to know about pregnancy of the prosecutrix, he canceled the marriage, therefore, prosecutrix has falsely implicated the appellant in the crime in question. He also submits that there is delay of six months in lodging the First Information Report and there is no valid and sufficient reason assigned for the said delay. He further submits that case of the prosecution was not supported by any clinching evidence and defence witnesses have also proved the probable defence of the appellant/accused, therefore, learned Trial Court has committed illegality in convicting and sentencing the accused/appellant for the aforesaid offences by not appreciating the evidence available on record in its proper perspective.

(10) On the other hand, learned counsel for State, while supporting the judgment of the trial Court, submits that as there is no previous enmity between the accused/appellant and the prosecutrix, therefore, the question of false implication of the accused appellant in the crime in question does not arise. He further submits that as per document (Ex.P-15), prosecutrix was carrying five months' of pregnancy and when she disclosed about her pregnancy from the accused/appellant to her father, FIR (Ex.P-7) has been lodged by

the prosecutrix. He further submits that as per School Dakhil Kharij Register (Ex. P/4-A) at the time of incident the prosecutrix appears to be minor and as per Ossification Test report (Ex. P/6) the age of the prosecutrix should be 15 to 16 years. Therefore, the trial Court is absolutely justified in convicting and sentencing the accused/appellant as aforementioned, which does not call for any interference in the instant appeal.

(11) I have heard learned counsel appearing for the parties and perused the record of trial Court.

(12) Hori Ram Thakur (PW-4) has proved the Dakhil Kharij Register (Ex. P/4-A) stating in paragraphs 1 to 3 of his statement that as per Dakhil Kharij Register (Ex. P/4-A), the date of birth of the prosecutrix is 24.03.1992 and the said information was given by the father of the prosecutrix at the time of her admission in class- I.

(13) Prosecution Witness No. 7 prosecutrix has stated, in paragraph one of her statement, that Suko Bai, sister of the appellant/accused is her neighbour and was her friend. She states that she used to visit the house of the appellant to meet her friend. On the date of incident, when she went to the house of the appellant to meet her friend (sister of the appellant) she was not at her home and accused/appellant was present in the house. The accused/ appellant shut the door from inside and committed forcible sexual intercourse with her against her will and due to which, she

got pregnant. When she told about her pregnancy to the appellant, he refused to marry her and thereafter she narrated the entire incident to her father and thereafter FIR (Ex.P-7) was lodged. She also stated, in paragraph 6 of her statement, that on 6th October, 2006 a baby boy was born and the said baby boy is from the appellant's side. The statement of the prosecutrix has been corroborated with the medical report of the prosecutrix. Thus, there is no reason to disbelieve the statement of the prosecutrix.

(14) Ram Singh (PW-8), father of the prosecutrix, stated in paragraph one of his statement that at the time of incident his daughter was aged about 15 years. He also stated that he admitted his daughter in class-1 at Primary School, Bhatara and her date of birth was mentioned in the Dakhil Kharij Register.

(15) Milendra Kumar (PW9), also stated in paragraph one of his statement that prosecutrix informed him that when she visited the house of the appellant to meet her friend (Suko Bai), she was not at her home and accused/appellant was present in the house, thereafter, the accused/ appellant shut the door from inside and committed forcible sexual intercourse with her against her will and due to which, she got pregnant.

(16) From careful perusal of the evidence of aforesaid witnesses, it is apparent that there is no reason to disbelieve the statements of the prosecution witnesses such as Ram Singh (PW-8) & Milendra

Kumar (PW9) including the statement of prosecutrix (PW-7) as the statement of the prosecutrix is also corroborated with her medical report Ex.P-1, in which it has also been mentioned that prosecutrix was below 16 years of age. Thus, considering the aforesaid evidence which established the fact that the prosecutrix, who below 16 years of age (minor girl), is subjected to forcible sexual intercourse by the accused/applicant, I am of the view that the trial Court is absolutely justified in convicting and sentencing the accused/appellant for the aforesaid offence.

(17) As regards the argument advanced on behalf of the accused/appellant that the prosecutrix has falsely implicated the accused/appellant in the crime in question as her marriage was cancelled, in paragraph 9 of her deposition the prosecutrix has specifically stated that her engagement was solemnized with one Gandlal, but when he came to know about her pregnancy, he himself canceled the engagement, therefore, question of false implication by the prosecutrix of the appellant in the crime in question does not arise.

(18) In view of the foregoing, the appeal being devoid of merit is liable to be and is hereby dismissed.

(19) It is made clear that Vide memo dated 12.02.2020 an information has been received from the Office of Superintendent (Central Jail), Durg that the appellant has been released from the

jail after completion of his jail sentence, therefore, there is no need to pass any order regarding his surrender.

Sd/-

(Gautam Chourdiya)
Judge

Amita