

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03.3.2020

Delivered on 08.05.2020

Criminal Appeal No. 944 of 2017

Mahipal Singh S/o. Shiv Prayag Singh, 38 years, R/o.
Behind Bhagat Singh School, Pathraguda Jagdalpur, Distt.
Bastar (CG)

---- Appellant

Versus

State of Chhattisgarh, through District Magistrate,
Jagdalpur, Distt. Bastar (CG)

---Respondent

For the appellant : Shri VC Ottalwar, Advocate
For the respondent/State : Shri Afroj Khan, Panel Lawyer

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

1. The appeal is directed against judgment dated 27.5.2017 passed by Additional Sessions Judge (FTC), Bastar at Jagdalpur/ Special Judge under the Protection of Children From Sexual Offences Act, 2012 (for short 'the Act 2012'), in Special Session Trial No.02/2017 wherein the said Court convicted appellant for commission of offence under Section 376(2)(i) of the Indian Penal Code, 1860 and under Section 4 of the Act 2012 and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine

of Rs.1000/- and RI for 07 years and to pay fine of 1000/- respectively with default stipulation.

2. As per the version of the prosecution, the date of incident is 16.01.2017. Prosecutrix is PW-6 who is aged about 04 years. Said prosecutrix complained of pain to her mother on which her mother examined her private parts and found redness and swelling. On enquiry the prosecutrix intimated her mother that the appellant after putting soap inserted his finger in her private part. The matter was reported and investigated. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) In the present case Section 4 of the Act, 2012 will not apply because case does not fall in the ambit of said provision.

(ii) Other witnesses have not been informed by the prosecutrix regarding the incident which creates doubt in the prosecution story.

(iii) Version of the prosecutrix is not supported by medical evidence, therefore, story appears to be cooked up. Finding arrived at by the trial Court is not liable to be sustained.

(iv) To substantiate his arguments, learned counsel for the appellant placed reliance in the matter of **Yogesh Bharti @**

Jugnu vs. State of Chhattisgarh decided by this court on 01.4.2019.

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

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. In the present case date of incident is 16.01.2017, report lodged against the appellant on the same day and he has been named as culprit and his act of rape is also mentioned in the said report.

7. Prosecutrix (PW-6) deposed against the appellant that he inserted his finger in her private part. Version of the prosecutrix is supported by version of Nisha Tebhunna (PW-5), who is the mother of the prosecutrix and enquired about the matter and found redness and swelling on the private part of the prosecutrix. Version of this witness is supported by version of Vinayak Kumar (PW-1). All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of these witnesses is supported by the version

of Dr. Bhavani Bhagat (PW-7) who examined the prosecutrix and found redness on her private part. It is further supported by Dr. Shanti Pandey (PW-10) who examined the prosecutrix and treated her. There is nothing in the record to show that the appellant has been roped in false charges. There is nothing in the record to disbelieve the testimony of the prosecutrix and other supportive evidence. The report has been promptly lodged on the date of incident naming the appellant as culprit, therefore, there is nothing on record to reject the version of the prosecutrix.

8. In the present case date of incident is 16.01.2017. As per amended Section 375 of IPC, definition of rape vide enforced from 03.02.2013 is as under:

“A man is said to commit “rape” if he – (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person.”

From the definition which was already enforced on the date of incident, insertion of part of the body into the vagina amounts to rape. As per Section 376(2)(i) of the IPC , whoever commits rape on a woman when she is under sixteen years of age will fall in this category.

9. After evaluating the entire evidence, arguments advanced on behalf of the appellant is not sustainable and the case law cited is clearly distinguishable to the facts and circumstances of the case. Act of the appellant falls within mischief under Section 376(2)(i) of the IPC for which the trial Court has rightly convicted him and the same is hereby affirmed. The trial Court has also convicted him under Section 4 of the Act 2012. The appellant can be convicted for either offence in alternate under Indian Penal Code or for offence under the Act 2012. Conviction of the appellant under Section 376(2)(i) of the IPC is alternative under Section 4 of the Act, 2012 is hereby affirmed. The trial Court has awarded sentence of 10 years for offence under Section 376(2)(i) IPC which is minimum and less than minimum cannot be awarded. Therefore, sentence part is not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant is in jail, therefore, no further order for his arrest etc. is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE