

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 265 of 2012

Chowaram Nishad S/o Bhagatram Nishad, aged about 20 years R/o Village Pidhi, Police Station Tumgaon, District Mahasamund (C.G.).

---- Appellant

Versus

State of Chhattisgarh through the District Magistrate, Mahasamund, District Mahasamund (C.G.).

---- Respondent

For Appellant	:	None
For Respondent	:	Mr. Shubham Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13/01/2020

1. By the impugned judgment dated 31/01/2012 passed in Sessions Trial No. 57/2011 by the Sessions Judge, Mahasamund (C.G.), the Appellant has been convicted under Section 376 (1) of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 5000/- with default stipulation.
2. Facts of the case are that the age of the Prosecutrix (PW7) was about 14 years at the relevant time and she was studying with her Uncle (Fufa). On 10/05/2011 Sukhvanti Bai, grand mother of the Prosecutrix made a report alleging there that on 05/05/2011 at about 5:30 am, the Appellant had committed rape with the Prosecutrix on the roof of her house. On the basis of said report, offence has been registered. Statement of the Prosecutrix as well as other witnesses have been recorded. After completion of investigation, a charge-sheet has been filed. As many as 8 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been

recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Raipur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and already released 10/02/2018.
5. Since no one appears on behalf of the Appellant, therefore, I am going to decide this appeal on its merit.
6. I have heard Learned Counsel appearing for the State and perused the record.
7. As per the case of the prosecution, the age of the Prosecutrix was about 14 years at the relevant time. Grandmother of the Prosecutrix, Sukhvantin Bai (PW5) in her Court statement has categorically stated that the age of the Prosecutrix was about 14 years. On the date of recording the statement of the Prosecutrix also, the trial Court has recorded the age the Prosecutrix as 14 years. Kotwar Genda Das (PW8) who recorded birth entries of the Prosecutrix in the Kotwari Register also deposed that as per the entries of the Kotwari register, the date of birth of the prosecutrix is 16/09/1996. The above statement of the Genda Das (PW8) is not rebutted. Thus, from the evidence adduced by the Prosecutrix, it is established that the age of the Prosecutrix at the relevant time was about 14-15 years.
8. The Prosecutrix (PW7) in her Court statement has categorically stated that on the date of incident at about 5:00 am, she was present on the

roof of the house. At that time, the Appellant came there and pushed some clothes in her mouth, and committed rape with her. Purshottam (PW2), brother of the Prosecutrix also deposed that in the night before the incident, the Appellant was sleeping with him in their house. On the next day at about 5:00 am, he saw the Appellant fleeing from the roof of their house. As per this witness, in the evening, his sister narrated the entire incident to him. Sukhvanti (PW5) also deposed that Purshottam told him to come and then she came to the house. There, the Prosecutrix narrated the incident to her. All the witnesses have remained firm during their cross-examination.

9. From the above evidence adduced by the prosecution, it is established that at the time of incident, the Prosecutrix was aged below 16 years and the Appellant had committed rape with her. Thus, offence under Section 376 is duly proved against him and the trial Court has rightly convicted and sentenced the Appellant.
10. Consequently, I do not find any merit in this appeal. The same is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge