

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 163 of 2015

Reserved on : 29.11.2019

Delivered on : 06.01.2020

Toransingh, S/o Baleshwar Sidar, aged about 34 years, R/o Village-Piparkhar, P.S. Ambagarh Chauki, District- Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Ambagarh Chauki P.S., District- Rajnandgaon (C.G.)

---- Respondent

For Appellant : Mr. B. Madhava Rao, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 24.09.2014 passed by Additional Sessions Judge (F.T.C.), Rajnandgaon (C.G.) in Session Trial (POCSO) No. 20/2013, wherein the said court convicted the appellant for commission of offence under Sections 376 (2)(i) of IPC, 1860 & Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short "the Act, 2012") (Taking advantage of mental & physical disable, committed penetrative sexual assault on a child) and sentenced to undergo R.I. for 10 years and fine of Rs. 500/- on each count with further default stipulations.

2. In the present case, prosecutrix is PW-2. She is mentally and physically disable. The appellant, on 23.09.2013 at about 4:00 p.m. while the prosecutrix was going to answer the call of nature in Village- Piparkhar, dragged her to the field and taken off her cloths, committed rape on her. The matter was informed by her to her grand-mother Fulmat Bai (PW-1) by signs and indication as she is handicapped and unable to speak. The report was lodged by Fulmat Bai on 24.09.2013 at Police Station- Ambagarh Chauki. The matter was investigated, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellant submits as under:-
 - (i) Dr. Sohadra Thakur (PW-11) who examined the prosecutrix, did not find any injury on her body and the prosecutrix deposed that at the place of incident, persons were cultivating in the field, but no one supported version of the prosecutrix, therefore, her version is not reliable.
 - (ii) The evidence of other witnesses is contradictory in nature and the same is not sufficient to record finding of guilt.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.
6. As per Section 2(d) of the Act, 2012, "child" means any person below the age of eighteen years. The penetrative sexual assault is defined in Section 3 of the said Act and as per the definition, penetration of penis into vagina is penetrative sexual assault. As per Section 5 of the Act, 2012, whoever taking advantage of child's mental or physical disability, commits penetrative assault on the child, is said to commit aggravated penetrative sexual assault which is punishable under Section 6 of the Act, 2012. As per Section 376 (2)(i) of IPC, 1860, a person commits rape on a woman when she is under sixteen years of age will fall in the said category.
7. To substantiate the charge, the prosecution examined as many as 12 witnesses. Dr. Sohadra Thakur (PW-11) deposed before the trial court that she examined the prosecutrix on 25.09.2013 at District Hospital, Rajnandgaon who was unable to speak and was under mental disability. Version of this witness is unrebutted during cross-examination and there is no other expert opinion contrary to the opinion of the said expert, therefore, it is proved that the prosecutrix in the present case is child under mental or physical disability.
8. As per version of Fulmat Bai (PW-1) who is grand-mother of the prosecutrix, age of the prosecutrix is about 12 years. Laxman (PW-3) who is father of the prosecutrix deposed before the trial court that age of the prosecutrix is 14 years. Teacher- Khileshwar Das Vaishnav (PW-12) brought school admission register of Primary School, Piparkhar and deposed before the trial court that he has made entry of

date of birth of the prosecutrix which is 07.06.2000. Version of this witness is unrebutted during cross-examination, therefore, date of birth of the prosecutrix is proved to be 07.06.2000. In the present case, date of offence is 23.09.2013 and on that date, the prosecutrix was aged about 13 years and 3 months.

9. The prosecutrix (PW-2) deposed before the trial court that on the date of incident at about 4:00 p.m., she went outside the house to ease herself where the appellant caught hold her hand and breast and made her lie-down, removed her undergarment and thereafter, committed rape on her. Version of this witness is supported by version of Fulmat Bai (PW-1) who is her grand-mother. As per version of this witness, a meeting was convened in the village which is supported by Laxman (PW-3) who is father of the prosecutrix. It is again supported by version of Sundarlal (PW-4) who was present in the said meeting. Again, it is supported by version of Bhanwar Singh Mandavi (PW-6) who was also present in the said meeting. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
10. The statement of the prosecutrix is quite natural and inspiring confidence and when her evidence is inspiring confidence, no corroboration is required in the present case. There is ample corroboration from corroborative piece of evidence. The report was lodged (Ex.P/1) on next day i.e. on 24.09.2013 at Police Station- Ambagarh Chauki in which name of the appellant is mentioned as culprit and his act of rape is also mentioned in the said FIR.

11. It is true that there is one day delay in lodging the report, but the delay in lodging the report in the case of sexual assault cannot be equated with the case involving other offences. The family members after giving it serious thought decided to lodge the report. Where report of rape is to be lodged, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. There are several factors which weigh in mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is one day delay in lodging the FIR. In view of the above, the argument advanced on behalf of the appellant is not sustainable.
12. The persons who were cultivating near the field are if not coming forward for want of their knowledge or their understanding or for some other reason, the same is not sufficient to discard the evidence adduced before the trial court. Injury on private part of the prosecutrix is not compulsory and the same is also not sufficient to discard the evidence which is on record. There is no significant contradiction in the statement of the prosecutrix and other witnesses which go to root of the case, therefore, the argument advanced on behalf of the appellant is not sustainable.
13. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve

the evidence of the prosecutrix and other witnesses. The act of the appellant falls within mischief of Sections 376 (2)(i) of IPC & Section 6 of the Act, 2012 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

14. The trial court awarded R.I. for 10 years for commission of offence under Section 376 (2)(i) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. The appellant is reported to be in jail, therefore, no further order of arrest etc. is required.

**Sd/-
(Ram Prasanna Sharma)
Judge**