

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 1080 OF 2012Judgment Reserved on 22/01/2020Judgment delivered on 19/05/2020

Ravindra Bishoi @ Ravi, aged about 25 years S/o Balram Bishoi, R/o Kondagaon, Forest Colony, Allbeda para, P.S. Kondagaon, District Kondagaon (C.G.)

....Appellant

Versus

State of Chhattisgarh: Through- Police Station Reserved Center (Schedule Caste and Schedule Tribe), Jagdalpur, District Bastar (C.G.)

...Respondent

For Appellant: Mr. Shobhit Koshta, Advocate

For Respondent: Mr. Amit Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV JUDGMENT

1. This appeal has been preferred against the judgment dated 21/11/2012 passed in Sessions Trial No. 21/2012 by the Sessions Judge, Bastar at Jagdalpur (C.G.), whereby the Appellant has been convicted under Sections 376 (2) (ch) and 363 of the Indian Penal Code and sentenced to undergo RI for 10 years with fine of Rs. 5,000/- and RI for 3 years with fine of Rs. 1000/-, respectively with default stipulations.
2. Facts of the case are that the Prosecutrix is a girl aged about 2 years at the time of incident. On 21/12/2011 at about 8:00 pm, the Prosecutrix was

sleeping in her house. The Appellant had taken her with him towards *Nahar* without informing anyone. There he committed rape with the Prosecutrix. Kailash (PW1) father of the Prosecutrix and Meena (PW2), mother of the Prosecutrix searched the Prosecutrix and when they could not find the Prosecutrix, they went to lodge the report at police station, kondagaon. At that time one Saleem called Kailash on his phone and told that the Appellant has left the Prosecutrix in his house. They returned to their house. Later on, Meena saw that there were some cut injuries in the private part of the Prosecutrix. Thereafter, Kailash lodged a written complaint Ex.P-1 on 23/12/2011 at Kondagaon police station. The Prosecutrix was medically examined by Dr. Manisha Agrawal (PW3) on 24/12/2011. During examination, she found some abrasions in the pubic area and vagina of the Prosecutrix. The hymen was ruptured and blood was coming out. She gave opinion that sexual intercourse was performed with the Prosecutrix. On these backgrounds, FIR has been registered vide Ex.P-6. Statements of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 6 witnesses. 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. One 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. Learned counsel appearing on behalf of the Appellant has submitted that

the Appellant has been wrongly convicted without there being any clinching evidence available on record. It has been submitted that the conviction of the Appellant is only based on the statements of Kailash (PW1), father and Meena (PW2), mother of the Prosecutrix. Both the above witnesses have categorically admitted that neither they had seen the Appellant taking the Prosecutrix with him nor they had seen the Appellant leaving the Prosecutrix at their house. Therefore, it is not established that if any rape has been done with the Prosecutrix, the same was done by the Appellant. The prosecution had not examined any of the witness who saw that the Appellant had taken the Prosecutrix with him. In these circumstances, the conviction of the Appellant is not sustainable.

5. Learned counsel appearing on behalf of the State opposes the argument advanced by the counsel for the Appellant and submits that there is sufficient evidence available on record to convict the Appellant, therefore, the conviction does not require any interference.
6. I have heard counsel for the parties and perused the record minutely.
7. Kailash (PW1) has deposed that on 21/12/2011, the Prosecutrix who was aged about 2 years, was sleeping in his house. He also deposed that some one had taken her daughter. Her wife told him that the Appellant had come to their house earlier. This witness has deposed on being searched, the Prosecutrix was not found then they had gone to the police station. In the meantime, one Saleem called him and told that the Prosecutrix has been recovered. The Appellant had taken her somewhere. This witness has further deposed that when they asked the Appellant about this then the Appellant told that he had taken the Prosecutrix only for roaming. This

witness has further deposed that the Prosecutrix was scared. He had taken the Appellant to the police station with him and scolded the Appellant there. On the next day, her wife told him on phone that there are some abrasions in the private part of the Prosecutrix, then he returned in the night and on the next day, he made a written complaint.

8. Meena (PW2), mother of the Prosecutrix has deposed that on the date of incident, the Appellant had come to their house and had taken her daughter with him without informing anyone. According to this witness, she had told this fact to her husband and they searched the Prosecutrix, but she was not found. When her husband has gone in search of the Prosecutrix then the Appellant came with the Prosecutrix from Talab side. Thereafter, she informed this to her husband. This witness has further deposed that the Prosecutrix was crying at that time. On the next day, she saw that there were cut injury in the private part of the Prosecutrix and blood was coming. She intimated this fact to her husband through phone. On the next day, they made a written complaint. During cross-examination, this witness in para 7 & 8 has admitted the fact that she had not seen the Appellant taking the Prosecutrix with him. She also had not seen that the Appellant had left the Prosecutrix at their house.
9. Dr. Manisha Agrawal (PW3) has examined the Prosecutrix. Her report is Ex.P-3. According to this witness, she found some abrasions in the pubic area and vagina of the Prosecutrix. The hymen was ruptured and blood was coming out. She gave opinion that sexual intercourse was performed with the Prosecutrix.
10. Inspector K. B. Nage (PW5) had registered the FIR vide Ex.P-6. N.P.

Mishra (PW6) is SDOP who investigated the entire matter.

11. On minute examination of the above evidence, it makes clear that Kailash (PW1) and Meena (PW2), both have deposed that the Appellant had come to their house and had taken the Prosecutrix with him. After some time, the Appellant returned with the Prosecutrix. On the next day in the morning, Meena (PW2) saw that there were some cut injuries in the private part of the Prosecutrix. Though during cross-examination both the above witnesses have admitted the fact that they had never seen the Appellant taking the Prosecutrix with him and he left the Prosecutrix to their house, Kailash (PW1) has categorically stated in para 4 that when he reached to the police station one Saleem had informed him through phone that the Appellant had returned with the Prosecutrix to their house. On being asked the Appellant, he admitted that he had taken the Prosecutrix only for roaming. The above statement of this witness has not been rebutted during his cross examination. Thus, from the statment of this witness it is established that when he asked the Appellant that he had taken the Prosecutrix with him then the Appellant had admitted this fact. During examination of the Appellant under Section 313 of the Cr.P.C, he had admitted this fact in reply to question no. 7 that on 21/12/2011 i.e. on the date of incident, he had gone to the house of Kailash (PW1). Thus, from the above admission also, it is established that on the date of the incident, the Appellant had gone to the house of the Appellant. After the incident also, on being asked the Appellant, he had admitted that he had taken the Prosecutrix with him. As per medical report, there were cut injuries in the private part of the Prosecutrix. There is no evidence in the record that the injuries were self made or accidentally.

12. From the entire evidence and admission made by the Appellant, it is established that the Appellant had gone to the house of the Prosecutrix and had taken her with him, and he had committed rape with her. Thus, the finding of the trial Court is in accordance with law and the said Court has rightly convicted the Appellant.
13. In the result, I do not find any merit in this appeal. The appeal is dismissed.
14. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

rahul