

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1332 of 2014

Laxman Pahadi Korwa S/o. Gangi Pahadi Korwa, Aged 26 years, R/o. Bhadiya, Laghnapura, Out post Pandra Path, P.S. Bagicha Civil and Revenue District Jashpur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station Bagicha, Civil and Revenue District Jashpur (C.G.)

---- Respondent

For Appellant : Mr. Manoj Kumar Jaiswal, Advocate.

For Respondent : Mr. Samir Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

18.06.2020

Prosecution case in brief is that on 23.12.2013 when the prosecutrix (PW-2) aged about 14 years at the relevant time had gone to the field along with her elder sister Ghurni (PW-4), sister-in-law Kumari Bai (PW-5) and friend Sachiya Bai (PW-10), at about 3 PM the accused/appellant came there carrying a rod with him, asked her to accompany him under threat and took her, first to village Malsema and kept her for a night in the house of his aunt, and committed rape on her. Next day he took her to another village Jamhatwa from where she was recovered by her father and taken back to her village. Unnumbered report (Ex.P-3) was lodged by her on 24.12.2013 on

the basis of which the numbered one being (Ex.P-21) came to be registered on 25.12.2013 against the accused/appellant for the offences under Sections 363, 366, 376 IPC and Sections 3 and 4 of the POCSO Act. After medical examination of the prosecutrix and completion of other investigation related formalities, *challan* was filed against him under the same sections followed by framing of charge accordingly.

2. Learned Court below held the accused/appellant guilty for all the aforesaid charges and sentenced him to undergo RI for 3 years with fine of Rs.500/- u/s 363; RI for 5 years with fine of Rs.500/- u/s. 366; RI for 7 years with fine of Rs.1000/- each u/s. 376 (1) IPC and under the POCSO Act respectively, vide judgment impugned dated 29.08.2014 passed in ST No.16/2014. Hence this appeal.
3. Counsel for the accused/appellant attacks the judgment impugned on the ground of number of illegalities and irregularities committed by the Court below in passing the same. The prosecutrix has also been stated to be a consenting party in accompanying the accused/appellant without any threat or intimidation posed by the accused/appellant. Even the medical evidence, according to the counsel for the appellant, does not lay support to the case of the prosecution but yet an assumption based finding has been recorded against the accused/appellant which is illegal, arbitrary and contrary to the provisions of law.
4. On the other hand, state counsel supports the judgment impugned to be in accordance with law.

5. From the evidence of the prosecutrix (PW-2) it is apparent that on the date of incident at about 3 PM when she was working in the field along with PW-4, PW-5 and PW-10, the accused/appellant came there carrying a rod with him, asked her to accompany him and also put her under fear. Her evidence further shows that putting her under fear the accused/appellant took her to two villages and in the first night committed forcible sexual intercourse with her. It is from village Jamathawa the prosecutrix was recovered by her father (PW-3), and after getting back home she informed about the incident to her mother (PW-13). PW-4, PW-5 and PW-10 have also supported the version of the prosecutrix saying that on the date of incident at about 3 PM when they all were working in the field, the accused/appellant came there carrying a rod and threatening the prosecutrix, took her away from there. Though PW-4 and PW-10 have turned hostile yet on material particulars that the accused/appellant had come to the spot carrying iron rod with him and taken away the prosecutrix putting her under threat, they remained firm. Doctor (PW-6) who medically examined the prosecutrix and gave her report (Ex.P-8) has not given any definite opinion regarding commission of rape on her, but she has also not stated that no rape was committed on the prosecutrix. Father of the prosecutrix (PW-3) has also supported the case of the prosecution stating that the prosecutrix was recovered from the house of the accused/appellant on 24.12.2013 and after returning home she narrated the entire incident to her mother (PW-13) regarding being taken away by the accused and subjected to rape on one night. He has also stated that on the date when the prosecutrix was taken away by the accused/appellant,

Sachiya Bai (PW-10) had come to him and informed about the prosecutrix being taken away by the accused/appellant after being threatened by rod. Likewise, her mother (PW-13) has also stated that after getting back home the prosecutrix informed her the manner in which she was taken away and subjected to forcible sexual intercourse by the accused/appellant. She has stated that at the relevant time her daughter was aged in between 12 and 14 years. School register (Ex.P-2) duly proved by its author (PW-1) also shows the date of birth of the prosecutrix as 10.04.1998. This shows that on the date of incident the prosecutrix was below 18 years of age. Even the radiologist (PW-15) describing number of physical features in order to determine the age has opined the prosecutrix to be in between 14-16 years of age at the relevant time. Investigating Officer (PW-16) has also supported the case of the prosecution. Even assuming for the sake of convenience that the prosecutrix had not opposed to the act of the accused/appellant and was a consenting party all throughout, it is worthwhile to hold that being below 18 years of age at the relevant time her consent, if any, becomes immaterial.

6. Thus the overall evidence discussed above leads to an irresistible conclusion that by taking away the minor prosecutrix with him, keeping in captivity for two days and ravishing her physically, the accused/appellant has committed the offences punishable under Sections 363, 366, 376 (1) IPC and Section 4 of the POCSO Act. His conviction for these offences, being well founded, is hereby maintained.
7. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, dated 16.06.2020 shows that after getting the benefit of

remission, the accused/appellant has already been released from the jail on 21.06.2019 therefore, no observation regarding the sentence part is required to be made by this Court.

8. Appeal is thus dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/Ajay.s