

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 1818 /97.

APPELLANT.

(IN JAIL).

: Manijar Ram S/o. Budhram
Uraon, age 25 years,
R/o. Vill- Chidapara,
PS- Sitapur Distt-Sarguja, MP.

-Vs-

RESPONDENT.

: State of M.P. through
PS- Sitapur Distt-Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL
PROCEDURE-1973.

CRIMINAL APPEAL NO. 1818/97

Manijar Ram

-Vs-

State

J U D G M E N T

By Hon'ble Shri R.S.Garg J.

The appellant being aggrieved by the judgment dated 8.8.1997 passed in Sessions Trial No. 95/97 by the learned Sessions Judge, Ambikapur convicting the appellant under Section 376 (2)(h) and sentencing him to undergo Rigorous Imprisonment for 10 years, has filed this appeal.

2) The prosecution case in brief is that on 5.2.1997 the mother of the prosecutrix had gone to some relation, in the evening the accused went to the house of the prosecutrix and asked her to accompany him so that both of them could go and call the mother of the prosecutrix. The prosecutrix went with the accused to some distance but on way the accused caught hold of her hair, dragged her towards the field, thereafter he fell her on the ground, denuded her and thereafter the accused committed rape upon her. The accused thereafter brought the girl to the village and required one Iliyas to go and enquire about the mother of the prosecutrix. The prosecutrix thereafter went to her uncle's place where she informed of the entire incident to her aunt. Thereafter the mother was informed to her parents and the first information report was lodged at the police station Sitapur. The girl was sent for her medical examination. The doctor gave positive report about the sexual assault. The clothes of the girl were seized and were sent for

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chemical analysis. The statements of the prosecutrix and witnesses were recorded and on completion of the prosecution investigation the challan was filed. The accused having denied commission of ^{the} offence ^{was} put to trial.

3) Learned trial Court after recording the evidence and hearing the parties convicted and sentenced the accused as referred ^{to} above.

4) Learned counsel for the appellant submits that from the statements of the doctor it would clearly appear that the girl was about 16 years of age and the facts would also show that she was consenting party hence the appellant could not be held guilty of the charge. On the other hand learned counsel for the State referring to the statements of the girl so also the document Ex.P/4-C submits that the girl was below 12 years of age at the time of commission of offence therefore the question of consent does not ^{arise} ~~appear~~ and in view of the ^{medical} ~~manner~~ reported and the conduct of the prosecutrix, the appellant was rightly punished.

5) P.W.1 Anita in her statements has clearly stated that the accused Manijar came to her house and required her to go with him to call her mother. She treating the appellant as her brother went with him to some distance but after sometime the accused pounced upon her, caught her hair, dragged her to some distance, fell her on the ground and committed rape upon her. She clearly stated that when the accused committed rape upon her she started weeping. She has also testified that the accused brought her back to the village and after reaching the village she narrated ~~of~~ the incident to the relations and

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parents. From ^{her} the ~~case~~ ~~diary~~ statements it ~~is~~ clearly appears that she made serious allegation against the appellant. Doctor who had examined the girl opined that the girl was about 14 years of age and suffered sexual assault. From the report of the doctor it clearly appears that the girl suffered two tears in her hymen and she was bleeding on touch.

6) The prosecution has relied upon Ex.P/4-C to say that the girl was below 12 years of age at the time of incident. In support of their contention they have examined Beeransai who had brought the admission register to prove the age of the girl. On the face of this ^{evidence} ~~contention~~ that the girl was ~~of 14~~ years, the opinion of the doctor that the girl was of 14 years cannot be accepted. The trial Court while recording the statements of the girl has estimated her to be of 11 years. In the opinion of this Court the trial Court was not unjustified in holding that the girl was below 12 years of age. The trial Court was also justified in holding the accused guilty.

7) At this stage Smt. Tiwari, learned counsel for the appellant submits that the sentence awarded to the accused be reduced to the period already undergone.

8) After hearing the parties on the question of sentence I am unable to concede to the request made by the learned counsel for the appellant. The law provides for minimum 10 years jail sentence in case where the prosecutrix is below 12 years of age. Even otherwise the accused has not brought any mitigating

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circumstances on the record for reduction of the sentence. On the other hand it appears that the girl was treating the accused as her brother and was having absolute confidence ^{in him} on her. If the person who was taken to be brother by the prosecutrix commits such an offence then the conduct of the accused leaves no room for exercising any leniency.

I find no reason to interfere. The appeal deserves to be and is accordingly dismissed.

Sd/-

R.S. Garg
Judge

29.03.2001

Thakur.