



C.A. No. 625/05

मामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p style="text-align: center;"><u>Criminal Appeal No. 625/2005</u></p> <p><u>APPELLANT</u> -Bunty @ Ravi Pahuja, S/o. Late Shri Parmanand Pahuja, aged about 21 years, R/o. Behind Nagorao Shesh School, Juna Bilaspur, P.S. Kotwali, Distt. Bilaspur (C.G.)</p> <p style="text-align: center;"><u>Versus</u></p> <p><u>RESPONDENT</u> State of Chhattisgarh, through Police Station Kotwali, Distt. Bilaspur (C.G.)</p> <hr/> <p>SB: HON'BLE SHRI DHIRENDRA MISHRA, J.</p> <hr/> <p>Shri Awadh Tripathi, Advocate for the appellant. Shri Yashwant Singh, Addl. Public Prosecutor, for the respondent /State.</p> <hr/> <p style="text-align: center;"><u>ORAL JUDGMENT</u></p> <p><u>28-5-2007</u></p> <p><u>Dhirendra Mishra, J.</u></p> <p>Appellant has preferred this appeal under Section 374(2) of Cr.P.C. against the judgment of conviction and order of sentence dated 22-7-2005 passed by learned Addl. Sessions Judge, Bilaspur in Sessions Trial No. 113/2005 whereby learned Additional Sessions Judge after holding the accused guilty for commission of offence under Section 376 read with Section 511 of I.P.C., sentenced him to undergo R.I. for 5 years and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo additional R.I. for one month.</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

मामला क्रमांक Cr. A. No. 625/05 सन् 200

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	<p>2. Case of the prosecution, in brief, is that the appellant took minor prosecutrix aged 4 years and attempted to rape her, as a result of which, she cried. P.W. 2 Smt. Sunita Makhija, mother of the prosecutrix asked her servant Santoshi to search the prosecutrix, at that juncture, the accused left the child. The prosecutrix returned to her mother weeping and narrated the incident. The incident is of 11.1.2005. P.W.2 Sunita Makhija, mother of the prosecutrix lodged the report on 12.1.2005 vide Ex.-P/1. The child was sent for medical examination to Medical College, Bilaspur, where Dr. (Smt.) M. Pandey examined her and medical examination report is Ex. P/2. During investigation, underwear of the prosecutrix was seized vide Ex.P/4. Spot map was got prepared vide Ex.P/5. The accused was sent for medical examination, where Dr. P.K. Tiwari (P.W.-7) examined him and he gave report of Ex. P/6. Vaginal slides of the prosecutrix were taken by the Doctor and the same was seized vide Ex. P/7. Underwear and slides of the prosecutrix were sent for chemical analysis to Forensic Science Laboratory, Raipur vide Ex. P/11. After usual investigation, the charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Court Bilaspur and the same was received on transfer for trial by learned Additional Sessions Judge.</p> <p>3. Charge under Section 376 read with Section 511 I.P.C. was framed against the appellant, who abjured his guilt. The prosecution in order to establish the charge against the appellant examined 11 witnesses. Thereafter, statement of accused under Section 313 of Cr.P.C. was recorded in which he denied the circumstances appearing against him in the prosecution evidence and pleaded that he has been falsely implicated in the crime because of a transaction related</p>	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आमला क्रमांक Cr-A-No. 625/2005 सन् 200

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	<p>dispute. Learned trial Court after hearing learned counsel for the parties has convicted and sentenced the accused/appellant as mentioned above.</p> <p>4. Learned counsel for the appellant submits that the case of the prosecution is totally improbable. The complainant has denied lodging of the report and the report was lodged after medical examination of the prosecutrix. He further submits that there is material improvement in the evidence of mother of the prosecutrix which renders her testimony unreliable. He further submits that in absence of statement of the prosecutrix, the version of the mother of the prosecutrix should be scrutinized minutely and from her statement, it would be evident that she has made material improvement with regard to the fact that after taking the child, the appellant took out his full pant after taking out the underwear of the prosecutrix, however, the fact that the appellant took out his full pant is missing in the F.I.R. of Ex.P/1. He further submits that even for the argument, if the version of Sunita P.W.-2 is accepted in toto, she has nowhere stated that the child told her that after taking out her underwear and his own full pant the accused attempted to penetrate his private part in her vagina and thus there is no evidence of attempt by the appellant and the Court below has convicted the appellant on the basis of conjectures and surmises.</p> <p>5. On the other hand, learned counsel for the State has supported the judgment of the trial Court.</p> <p>6. We have heard learned counsel for the parties.</p> <p>7. During investigation, diary statement of prosecutrix has been recorded by investigating officer; however, after entering into the witness box, she was unable to depose and, as such, she was given up by the prosecution. The conviction is based on statement of P.W.-2 Smt. Sunita, the mother of the prosecutrix as also</p>	

(24)

सामला क्रमांक Cr. A. No. 625/2005 सन् 200

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	<p>the statement of lady Doctor, who has examined the prosecutrix. P.W.-2 Sunita has stated that on the date of incident in the evening, she saw that her daughter Swati is not in the home, she sent Santoshi (P.W.-4) to search her, who informed after sometime that she is not traceable. After sometimes, Sunita came weeping in frightened condition. She narrated that the accused took her inside his house and took her underwear and his own full pant. She was crying loudly. Her cries were audible from home. The accused left her. Her vagina was red and she was complaining pain and she was weeping. She narrated the incident to Padma and on the same night Padma narrated the incident to her husband-Krishna Kumar. On the next date, she, her husband and Krishna Kumar went to Police Station City Kotwali and she lodged the report of Ex. P/1. Her daughter was sent for medical examination to Medical College, Bilaspur. She has stated that they do not want to remind her daughter about the incident as it may affect her mind. In cross-examination, she has stated that while lodging report, she has mentioned that the child told her that the accused took out his full pant, if this fact is missing in the report of Ex. P/1 or in her diary statement she cannot tell the reason for the same.</p> <p>8. P.W.-3 Ramchandra Makhija, husband of P.W.-2 Sunita has stated that he woke up in the evening, he saw child Swati weeping. Assuming that her mother might have scolded her, he went to shop. On the next date, in the morning at 8.30 a.m. his brother Krishna Kumar was going with Swati, thereafter, at about 10.30 a.m. police came to him and asked him and his wife to come to police station. They both went to police station and found his brother Krishna Kumar and daughter Swati there. Thereafter, report was lodged by his wife. His daughter was medically examined even prior to their arrival with the consent of his brother Krishna Kumar. P.W.-6 Krishna Kumar has stated that on the date of incident at</p>	

28

C-A-No. 625/2005

सामला क्रमांक

सन् 200

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	<p>about 10-11 P.M., Pushpa Devi and Maya Devi informed him that the accused has committed <i>Burakam</i> with Swati, as a result of which Swati is weeping and in the morning on the advice of father, he lodged the report. He went to police station in the morning and lodged the report in plain paper. Parents were called in the police station. Swati was sent for medical examination before arrival of her parents. When they returned after examination of Swati, the mother of the prosecutrix lodged the report.</p> <p>9. Learned counsel for the appellant has very much stressed upon the fact that the prosecutrix was medically examined even before lodging of F.I.R. Ex. P/1 as is evident from the evidence of P.W.-3 Ramchandra Makhija and P.W.-6 Krishna Kuamr Makhija and only after the Doctor has given his opinion that there was abrasion in the private part of the prosecutrix, the F.I.R. of attempting to commit rape has been registered, which falsified the claim of the complainant that the report was lodged on the basis of information given by the prosecutrix. He further submits that the Court below has placed much reliance on the medical examination report of the prosecutrix, wherein, abrasion in size of 2 mm x 1 mm has been found on the right side of urethra, it could be caused by nail also. He has further argued that no injuries were found on penis of the appellant which would have otherwise present, had he attempted to penetrate the vagina of a girl of 4 years.</p> <p>10. So far as argument of learned counsel for the appellant that report was lodged after medical examination of the prosecutrix is concerned, only on this count, the case of the prosecution cannot be rejected because the same does not in any manner prejudice the fact that the mother has lodged the report against the appellant involving her daughter aged 4 ½ years in such heinous crime and</p>	

(28)

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	<p>defence of the appellant of false implication is not acceptable, particularly when no apparent reason for such false implication has been cited during trial and the reason that there was a transaction related dispute is not of such a nature on the basis of which the mother can involve her own daughter.</p> <p>11. Now coming to the next question whether the prosecution has been able to establish that the appellant attempted to commit rape with the prosecutrix as a result of which, the prosecutrix sustained injury found by the Doctor in her medical examination. From the statement of P.W.-2 Sunita, mother of the prosecutrix which we have reproduced earlier, she has only stated that the child came weeping loudly and on being asked, she stated that the accused took her to his home, thereafter, took out her underwear and also took out is full pant and then she started weeping loudly and the accused left her and she returned weeping. She has nowhere stated that the child informed her that the appellant tried to penetrate his private part into her vagina and out of that pain she started weeping. From the evidence available on record, we find no evidence that the injury present over the private part of the prosecutrix was as a result of attempt of penetration by the appellant. P.W.-6 Krishna Kumar has stated that the accused tried to commit rape with the prosecutrix but this statement is based on information given by complainant Sunita, who has herself not stated this fact in her deposition. The fact that the accused took out his full pant is also an improvement from her earlier statement given in F.I.R. of Ex. P/1 and diary statement of Ex.D/1. In these circumstances, this Court is not inclined to accept the finding of the trial Court that the prosecutrix sustained the injury, when the appellant attempted to penetrate his penis in the vagina of the prosecutrix, therefore, the finding of the trial Court that the appellant attempted to rape cannot</p>	

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	<p>be sustained. However, on the evidence available on record, this Court is convinced that the appellant by taking the girl inside the home and making indecent act by taking out her underwear has tried to outrage the modesty of the prosecutrix which is an offence punishable under Section 354 of the I.P.C.</p> <p>12. In the result, the conviction and sentence of the appellant under Section 376 read with Section 511 of I.P.C. is set aside and instead, the appellant is held guilty for offence punishable under Section 354 of I.P.C. and sentenced to undergo R.I. for 2 years.</p> <p>13. It is stated that the appellant is in jail since 12.1.2005 and as such he has already completed the jail sentence of about 2 years and 4 months. Therefore, it is directed that the appellant be set at liberty forthwith, if not required in any other case.</p>	<p style="text-align: right;">Sd/- Dhirendra Mishra Judge</p>

P1-