



मामला क्रमांक Cr. A. No. 979/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश   | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश  |
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|                                    | <b><u>Criminal Appeal No. 979/2003</u></b>  |   |
|                                    | <b><u>APPELLANT</u></b>   | Harihar Prasad @ Hari Kewat, S/o Budhsen Kewat, Aged 25 years, R/o Kanchan Dafai, Khongapani, P.S. Manendragarh, District Korea (CG). |
|                                    |   | <b><u>Versus</u></b>  |
|                                    | <b><u>RESPONDENT</u></b>  | State of Chhattisgarh, through P.S. Manendragarh, Tehsil Manendragarh, District Korea (CG).   |
|                                    | SB: HON'BLE SHRI DHIRENDRA MISHRA. J.   |   |
|                                    | Shri Abhay Tiwari, Advocate for the appellant.<br>Shri Satish Gupta, Dy. Govt. Advocate for the respondent /State.  |   |
|                                    | <b><u>ORAL JUDGMENT</u></b>   |   |
|                                    | <b><u>30-5-2007</u></b>   |   |
|                                    | <b><u>Dhirendra Mishra, J.</u></b>  |   |
|                                    | <p>This appeal is directed against the judgment of conviction and order of sentence dated 27-8-2003 passed by learned Addl. Sessions Judge, Manendragarh, District Korea in Sessions Trial No. 154/2002 whereby learned Additional Sessions Judge after holding the accused guilty for commission of offence under Section 376(2)(f) of I.P.C., sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo additional R.I. for five months.</p> |   |
|                                    | <p>2. Allegation against the appellant is that on 20-12-2001 at about 11.00 a.m. he committed rape with prosecutrix aged 10 years. Case of the prosecution, in</p>  |   |

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|                                    | <p>brief, is that the prosecutrix along with her cousin (sister) Pooja had gone to attend call of nature towards ground of Bhayankar C.H.P. No.3 Khongapani. At that time the appellant came there and raped the prosecutrix. The incident was communicated by Pooja, a 3½ years old girl, to her mother Munni (PW-3) whereupon Munni (PW-3) and her husband Shivrath (PW-4) immediately went to the place of incident and saw the prosecutrix lying in an unconscious condition. Later the prosecutrix informed Munni that one person has forcibly raped her. Her father Chotelal (PW-2) was also informed and after his arrival, Dehati Nalishi (Ex.P/8) was lodged by father Chotelal (PW-2). Prosecutrix (PW-1) was sent for treatment to S.E.C.L. Hospital, Khongapani and thereafter to Primary Health Centre, Manendragarh where lady Dr. (Smt.) N. Yadav Rohan (PW-11) examined her and gave her report of Ex.P/11. Vagina slides were taken into possession vide Ex.P/7, spot map of Ex.P/10 was also prepared by Halka Patwari. Wearing apparels of the prosecutrix, underwear, petticoat stained with blood and semen were taken into possession vide Ex.P/6. On the basis of the Dehati Nalishi, FIR of Ex.P/9 was registered. The accused was arrested on 23-12-2001 vide arrest memo of Ex.P/13. Test identification parade was conducted after arrest of the accused by Executive Magistrate R.K. Shrivastava (PW-9) in which the prosecutrix and her sister Anuradha @ Pooja correctly identified the appellant.</p> <p>3. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Manendragarh, who in turn committed the case to the Court of Sessions Judge, Ambikapur and the same was received on transfer for trial by the learned trial Court. Charge under Section 376(2)(f) of the I.P.C. was framed against the appellant who abjured his guilt.</p> |  |

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|                                    | <p>4. Prosecution in order to establish the charge against the accused/appellant examined 12 witnesses in all and thereafter statement of accused was recorded under Section 313 of the Cr.P.C. in which the appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing the respective parties, convicted and sentenced the accused/appellant as mentioned above.</p> <p>5. There is no dispute that the prosecutrix was a 10 years old girl. It is also not in dispute that on medical examination it was found that the appellant was capable of committing intercourse and that the test identification parade was conducted by Executive Magistrate R.K. Shrivastava and at that time five other persons were mixed with the appellant.</p> <p>6. Learned counsel for the appellant submits that the report was lodged against an unknown person and the appellant has been prosecuted in this offence only on the basis of test identification parade in which the prosecutrix and her sister identified him as perpetrator of the offence, though the identification itself is doubtful because details of the persons mixed with the appellant at the time of identification parade has not been mentioned in the identification memo. He further submits that the appellant is a 25 years old young boy and therefore, the trial Court while imposing the sentence ought to have considered the age of the appellant and accordingly, some lesser punishment ought to have imposed upon him.</p> <p>7. On the other hand, learned counsel for the State submits that the brutal manner in which the offence has been committed upon a 10 years' old girl has</p> |  |

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|                                    | <p>been established by the prosecutrix and considering the manner in which the offence has been committed, no leniency is warranted and the trial Court has rightly convicted and sentenced the accused.</p>  |  |
|                                    | <p>8. I have heard learned counsel for the parties.</p>   |  |
|                                    | <p>9. To establish the charge against the appellant, the prosecution has examined the prosecutrix (P.W. 1), the victim of the offence, complainant Chhotelal (P.W. 2), the father of the prosecutrix, Munni (P.W. 3), aunt of the prosecutrix, Shivnath (P.W. 4), uncle of the prosecutrix and Dr. (Smt.) N. Yadav, Rohan (P.W. 11), who has examined the prosecutrix after the incident.</p>   |  |
|                                    | <p>10. P.W. 11 Dr. (Smt.) N. Yadav Rohan has stated in her deposition that she had examined the prosecutrix on 20-2-2001 and has found that secondary sex character of the prosecutrix were not fully developed, however no signs of injuries were found on her person. She was complaining pain in walking and urine and blood stains were present over her private parts and thighs. A cloth's pad stained with blood oozed from her private part was given to S.E.C.L. Hospital. Her internal examination was conducted after administering anesthesia. On examination, her hymen was found torn, vagina was full of blood and complete perineal tear from vagina was present involving rectal mucosa and external sphincter were also involved. Injury was of size of 5 cm in length. Blood was oozing from the sides of injuries and hymen. Swelling and reddishness both were present. Vagina tears on right side in size of 2 cm and on left side in size of 5 cm were present. Corners of tears were swollen, tenderness was present. On removal of clot acute bleeding was present from edges. Two slides were prepared from</p> |  |

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|                                    | <p>vagina and rectum; the same were handed over to the concerned Constable, after sealing them. Injuries were repaired in unconscious condition of the prosecutrix. She has given a positive opinion about the rape and has stated that definite symptom of penetration is present.</p> <p>11. The trial Court after preliminary examination of the prosecutrix has recorded her statement without administering oath. The prosecutrix has stated that she identifies the accused, though she does not know his name, who is a resident of Krongapani. She had gone to attend the call of nature at about 10.00 to 11.00 a.m. At that time the accused caught hold of her, gagged her mouth and after throwing her inserted his finger in her urethra as a result of which blood started oozing from her private part. Thereafter he inserted his penis and kept it inserted for sufficient time. Her younger sister aged 2 - 3 years was present at that time and thereafter the accused went away from there. Her sister went to her home running and narrated the incident to her maternal uncle Shivnath etc. He came to the place of incident and took her to home. Her father was also called and thereafter she went with her father to the Police Station and from Police Station to Manendragarh Hospital where she was examined. In the cross-examination she has stated that she had seen the accused on the date of incident and thereafter she saw him in the Court and in between she never saw him. Identification of the accused was conducted in the hospital and in that identification her sister Pooja had said that the accused is the same person who had committed rape. She has further stated that she is also identifying the accused. She has also stated that at the time of incident the appellant was wearing</p> |  |

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|                                    | <p>baniyan and full pant. The incident occurred beside the road, which is used by public.</p> <p>12. PW-9 R.K. Shrivastava, Executive Magistrate, has conducted test identification parade on 23-12-2001. He has also stated that in the test identification parade the accused was correctly identified by the prosecutrix and her sister Pooja and both of them had identified the accused by pointing finger towards him, which has been recorded in the test identification report of Ex.P/2. He has further stated in cross-examination that 4-5 persons were mixed at the time of test identification. However, the details of persons are not mentioned in the report. The version of the prosecutrix (PW-1) finds corroboration from statements of PW-2 Chhotelal -father, PW-3 Munni-Aunt &amp; PW-4 Shivrath-uncle, all of whom have stated that on the date of incident Pooja came and informed that prosecutrix has been raped and thereafter when they went to the place of incident they found that the prosecutrix was lying in unconscious condition and thereafter she was taken to the Police Station and subsequently to the hospital. The version of the prosecutrix is also corroborated by the statement of PW-11 Dr. (Smt.) N. Yadav Rohan, who has found the injuries described in the foregoing paragraphs.</p> <p>13. Thus, from the evidence of above witnesses, it is established beyond doubt that the prosecutrix, who is aged 10 years, has been raped, as a result of which she sustained grievous injuries over her private part. The prosecutrix has identified the accused in the test identification parade conducted by PW-9 R.K. Shrivastava, Executive Magistrate, on 23-12-2001. Her sister Pooja has also identified the accused correctly on test identification parade as is evident from the statement of PW-9 R.K. Shrivastava. The prosecutrix has also identified the accused during</p> |  |

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|                                      | <p>trial in the dock. Thus, on the basis of above evidence, the identity of the accused as perpetrator of the offence is established beyond reasonable doubt. Therefore, in the considered opinion of this Court, the trial Court has not committed any illegality in holding the appellant guilty of committing rape with a 10 years old prosecutrix and convicting and sentencing him under Section 376 (2)(f) of the I.P.C.</p> <p>14. So far as the sentence is concerned, as per Section 376(2)(f) of I.P.C., minimum sentence to be imposed upon the offender is 10 years. Looking to the age of the prosecutrix and also considering the manner in which the offence has been committed and the injuries sustained by the prosecutrix because of sexual intercourse, there is no adequate reason for making any concession in awarding of sentence as the accused has been sentenced with minimum sentence prescribed under the law.</p> <p>15. In the aforesaid circumstances, the appeal being devoid of substance is dismissed.</p> | <p>Sd/-<br/><b>DHIRENDRA MISHRA</b><br/>Judge</p>        |

P/-