

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1058 of 2003

Bhootnath, S/o Cherga Bhatra, aged about 22 years, R/o Village Bade Jeera
Khal, O.P. Karpavand, P.S. Bhanpuri, District Bastar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Bhanpuri, District Bastar,
Chhattisgarh

--- Respondent

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

29.9.2018

1. This appeal is directed against the judgment dated 4.8.2003 passed by the Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.40 of 2003 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation

2. Prosecution case, in brief, is that on 24.11.2002 at about 6:00 p.m., the prosecutrix (PW1), a girl aged about 16 years, was going along with her friend Domaybai (PW2) to purchase oil. Allegedly, on the way, the Appellant met them. He caught hand of the prosecutrix,

dragged her towards a mango garden and after gagging her mouth, committed rape with her there. Due to fear, Domaybai (PW2) ran away from the spot. Bangles of the prosecutrix broke and she suffered injuries over her shin and hand. Her petticoat tore. When the Appellant left her in the night at about 1:00 a.m., she returned home. At home, she told about the incident to her family members. Next morning, a village meeting was called. Thereafter, First Information Report (Ex.P8) was lodged by the prosecutrix. The prosecutrix was medically examined by Dr. S. Mukherjee (PW6). Her report is Ex.P17 in which she did not find any injury over any part of the body of the prosecutrix. Hymen of the prosecutrix was old ruptured. No definite opinion could be given regarding recent sexual intercourse. Though one abrasion was found on back of the neck of the prosecutrix, the same had healed. Below the knee also, some marks were found, but the same were old. Petticoat of the prosecutrix was seized vide Ex.P1. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offences punishable under Sections 341 and 376 of the Indian Penal Code. Charge was framed against him under Section 376(1) of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 6 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that there is nothing on record on the basis of which the conviction can be made. From the evidence on record, it is clear that the prosecutrix (PW1) was above 16 years of age. Even if the entire evidence is taken as it is, it seems that the prosecutrix was a consenting party. Allegedly, she went out of home at about 6:00 p.m. and did not return home till 12:00 midnight, but no effort was made by her parents to search out her. He further submits that Domaybai (PW2) was in the company of the prosecutrix, whom the Appellant had made run away. She also did not disclose anything about the incident to anyone. Thus, it is clear that the prosecutrix had gone with the Appellant at her own will and she was a consenting party.
6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1) has not stated anything about her date of birth or age. Her father Fagnuram (PW3) has stated that he has 4 children. The eldest child is a daughter and she has been married and she has 2 children and her age was 20-22 years. The prosecutrix is his second daughter, who is approximately 2 years

younger to his eldest daughter. Though birth certificate (Ex.P16) of the prosecutrix has been produced by the prosecution wherein date of birth of the prosecutrix is mentioned as 14.4.1986, the headmaster of the school, who prepared and issued the birth certificate, has not been examined by the prosecution. Thus, it is not established that who got the entry of date of birth of the prosecutrix made in the *Dakhil-Kharij* Register of the school and, therefore, the birth certificate (Ex.P16) has no evidentiary value. Thus, from the above, it is clear that on the date of incident, the prosecutrix was above the age of 16 years.

9. With regard to the incident, the prosecutrix (PW1) has deposed that on the date of incident, she was along with her friend Domaybai (PW2). At that time, i.e., at about 6:30 p.m., the Appellant came to her and threatened her. On this, Domaybai ran away from there and the Appellant took her towards a pond and there he committed rape with her. He left her in the night at about 1:00 a.m. Then she returned home and told about the incident to her parents. Thereafter, she lodged the First Information Report (Ex.P8). She has further stated that the petticoat which she had worn at the time of incident had torn. Her bangles had also broken. She had also suffered injuries on her both legs and neck. In her cross-examination, she has stated that the Appellant committed sexual intercourse with her once only, but he kept on catching her for long.
10. Domaybai (PW2) has stated that at about 6:00 p.m., she was going to a shop along with the prosecutrix to purchase oil. On the way, the Appellant met them and caught the hands of the prosecutrix.

He asked this witness to return her home. On this, she returned home and did not disclose about this to anyone. When the family members of the prosecutrix came to her to know whereabouts of the prosecutrix then she told them that the Appellant had taken the prosecutrix with him.

11. Fagnuram (PW3) is father of the prosecutrix. Kurupati (PW4) is mother of the prosecutrix. Both have stated that on the date of incident, they had sent the prosecutrix along with Domaybai (PW2) to a shop to purchase oil. Both have also stated that the prosecutrix had returned home at about 12:00 midnight. Both have further stated that when the prosecutrix did not return home, they went to the house of Domaybai (PW2) and asked her about the prosecutrix. Domaybai (PW2) told them that the Appellant had taken the prosecutrix towards the mango garden. Both have also stated that next day, a village meeting was called and thereafter the FIR (Ex.P8) was lodged.
12. Dr. S. Mukherjee (PW6) examined the prosecutrix on 25.11.2002. She has stated that her report is Ex.P17 in which she did not find any injury over any part of the body of the prosecutrix. Hymen of the prosecutrix was old ruptured. No definite opinion could be given regarding recent sexual intercourse. Though one abrasion was found on the neck of the prosecutrix, the same had healed. Below the knee also, some marks were found, but the same were old.
13. Investigating Officer Harinandan Singh (PW5) has stated that he registered the FIR (Ex.P8) and during investigation he prepared

spot-map (Ex.P12).

- 14.** A minute examination of the above evidence makes it clear that on the date of incident, the prosecutrix was above 16 years of age. Though the prosecutrix has stated that the Appellant, catching her hands, forcibly took her with him and committed rape with her, from the evidence on record it is clear that the prosecutrix stayed with the Appellant in the night by about 12:00 midnight to 1:00 a.m. She had come out of her house at about 6:00 p.m. When she did not return home, her parents did not try to search out her till 9:00 p.m. At about 9:00 p.m., they went to the house of Domaybai (PW2). There they came to know from Domaybai that the Appellant had taken away the prosecutrix with him. Even at that time, they did not try to search out the prosecutrix. As stated by Domaybai, in her presence, the Appellant had caught the hands of the prosecutrix and taken her away with him and he had asked Domaybai to return her home. Domaybai returned home, but she did not go to the house of the prosecutrix and did not disclose about the incident to the parents of the prosecutrix or anybody else. As stated by the prosecutrix, at the time of incident, her bangles had broken and her petticoat had torn. But, no recovery of broken bangles or torn petticoat was made by the prosecution from the spot or from the prosecutrix. As further stated by the prosecutrix, at the time of incident, she had sustained abrasion on her neck and she had also suffered injuries on her legs, but at the time of her medical examination, no injury was found either on her legs or on her neck. The abrasion found on the neck was old and had already healed and the marks found on the legs were also old. Allegedly, the prosecutrix had stayed with the Appellant for

about 6 hours. It does not appear to be natural that the prosecutrix would have stayed with the Appellant without her will for a long period of about 6 hours. Looking to the evidence adduced by the prosecution, it seems that the prosecutrix was a consenting party. On the date of incident, she was above the age of 16 years. Hence, in my considered opinion, no offence is made out against the Appellant.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
16. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge