

**(2018) 09 CHH CK 0136**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 847 Of 2014

Himeshwar Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision:** Sept. 8, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 376(2)(f)

**Hon'ble Judges:** Pritinker Diwaker, J

**Bench:** Single Bench

**Advocate:** Akhilesh Kumar, Vinod Tekam

**Final Decision:** Dismissed

**Judgement**

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 9.11.2012 passed by the Sessions Judge, Mahasamund (CG) in

ST No.79/2011, convicting the accused/appellant under Section 376(2)(f) of IPC and sentencing him to undergo RI for 10 years and pay a fine of

Rs.1000/- with default stipulation.

02. As per prosecution case, on 11.8.2011 at about 1.30 pm the appellant forcibly committed sexual intercourse with the prosecutrix, aged about four

years and was caught red handed. FIR (Ex.P/7) was lodged by PW-11 Ramlal Sahu, father of the prosecutrix. The prosecutrix was medically

examined by PW-9 Dr. Seema Binkar vide Ex.P/17. According to medical report, there were number of abrasions on the body of the prosecutrix,

profuse bleeding from her vagina, her hymen & anus were ruptured, laceration in majora, and her vagina was not admitting two fingers. While framing charge, the trial Judge charged the appellant under Section 376(2)(f) of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para- 1 of this judgment.

05. Learned counsel for the appellant submits that the appellant has been falsely implicated on account of village politics. The trial Court without proper appreciation of evidence on record has recorded conviction of the appellant by taking into consideration irrelevant things. He lastly submits that if this Court ultimately confirms the conviction part, considering the sentence awarded to the appellant, which is very much on the higher side, the same may be reduced suitably.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction as well as sentence awarded to the appellant is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-11 Ramlal, father of the prosecutrix, at whose instance FIR was registered, while supporting the prosecution case states that he was informed by milkman that his daughter was being taken by someone and ultimately he found his daughter lying in the kitchen garden of the said milkman. She was lying in pool of blood in unconscious condition. She was immediately taken to hospital and in the meanwhile, the person who had committed the offence was already caught by the villagers.

09. PW-1 Naradlal Sahu is an eyewitness to the incident. He states that upon hearing the cries of the prosecutrix, when he went to the spot he saw the appellant committing rape upon the prosecutrix and when he raised hue and cry, the appellant fled from there, however, he was caught by the

villagers. In cross-examination this witness remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or shaky. PW-2 Amarsingh & PW-3 Baratu have also supported the version of PW-1. PW-4 Shatrughan Dhruv, Head Constable, assisted in the investigation. PW-5 Vinod Mandavi, investigating officer, has duly supported the prosecution case. PW-6 Vijay Kumar Sahu, Patwari, prepared the spot map Ex.P/4. PW-7 Bhojram, Kotwar, was examined in relation to age of the prosecutrix. PW-8 Rohit Diwan is a witness to seizure Ex.P/1 whereby clothes of the prosecutrix were seized.

10. PW-9 Dr. Seema Binkar medically examined the prosecutrix vide Ex.P/17 and noticed that there were number of abrasions on the body of the prosecutrix, there was profuse bleeding from her vagina, her hymen & anus were ruptured, laceration in majora and her vagina was not admitting two fingers. PW-10 Dr. VP Singh medically examined the appellant and found him capable of performing sexual intercourse vide Ex.P/19.

11. Close scrutiny of the evidence makes it clear that it is the accused/appellant who forcibly took the prosecutrix to the kitchen garden and there he committed rape upon her. He was seen by PW-1 Naradlal Sahu who has categorically stated in the Court about the act of the appellant. In lengthy cross-examination he remained firm. His version is also duly supported by PW-2 Amarsingh & PW-3 Baratu. This apart, medical report of the prosecutrix also lends support to the prosecution case, according to which there were number of abrasions on the body of the prosecutrix, her vagina was bleeding profusely, her hymen & anus were ruptured and there was laceration in majora. Furthermore, the medical evidence as well as other documentary evidence adduced in respect of age of the prosecutrix remains unchallenged and as such, there is no doubt that the prosecutrix was below 12 years of age on the date of incident. Thus, in view of the above ocular, medical and documentary evidence available on record, it stands proved beyond all reasonable doubt that the appellant committed forcible sexual intercourse with the prosecutrix, a girl below 12 years of age and as such, his conviction under Section 376(2)(f) of IPC is strictly in accordance with law.

As regards the sentence part, considering the gravity of the offence, the sentence awarded to him appears to be commensurate with the same and

needs no interference by this Court.

12. Accordingly, the appeal being without any substance is liable to be dismissed and is dismissed as such. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.