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**(2018) 08 CHH CK 0176**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 310 Of 2015

Rajesh Fatwani alias Purushwani

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 14, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 376, 506
- Code Of Criminal Procedure, 1973 - Section 313
- Protection Of Children From Sexual Offence Act, 2012 - Section 5(l)(n), 6

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** Laxmin Tondey, Vivek Sharma

**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

1. This appeal has been filed against the judgment of conviction and order of sentence dated 16.12.2014 passed by Additional Sessions Judge/Special Judge (POCSO Act) Balodabazar, in special Sessions Trial No. 01/2014 convicting the accused/appellant under Sections 376, 506-II

IPC & Section 6 of the POCSO Act, and sentencing him to undergo imprisonment for life and pay fine of Rs. 5000/- under Section 6 of the POCSO

Act and rigorous imprisonment for three years with fine of Rs. 1000/- under Section 506-II IPC, plus default stipulations.

2. Facts of the case in brief are that on 4.1.2014 FIR (Ex. P-3) was lodged by the prosecutrix (PW-2) aged about 16 years at the relevant time to the

effect that the accused/appellant who happens to be her step father was having physical relations with her for last two years therefrom. FIR further

says that all the time the accused/appellant used to threaten her for not disclosing to anyone about the physical relations between the two or else he

would make her drop from the school. According to the case of prosecution, In the intervening night of 2/3.1.2014 the mother of the prosecutrix

namely Reshma Fatwani (PW-3) had also seen the accused/appellant having physical relations with her daughter (the prosecutrix herein) and also

putting her under threat of being dropped out of the school in case she disclosed the incident to anyone. On seeing this, PW-3 immediately went to her

sister Himani Herani (PW-1) and narrated the entire incident to her, and then the report was lodged. Based on this FIR, offence under Sections 376,

506 IPC and section 5 (I) (n) and 6 of the POCSO Act was registered against the accused/appellant. Prosecutrix was medically examined by Dr.

Anita Verma (PW-4) who gave her report Ex. P-8 stating that she was habitual to sexual intercourse. Progress report of prosecutrix of class VIII

was seized under Ex. P-1 where her date of birth is recorded as 4.11.1999 and according to it the age of the prosecutrix at the relevant time comes to

about 15 years, and two years prior thereto since when the accused started making physical relations with her, it comes to about 13 years. As per the

FSL report Ex.P-11 spermatozoa was found on the underwear of the prosecutrix, vaginal slides and underwear of the accused/appellant. After

completion of investigation, police filed challan against the accused/appellant u/s 376, 506 IPC and section 5 (I) (n) and 6 of the POCSO Act followed

by framing of charge by the Court below under Section 376, 506 (Part-II) IPC and section 6 of the POCSO Act.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 10 witnesses. Statement of the

accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been falsely implicated in the case as he failed to get registered his land in the name of the prosecutrix as per the agreement entered into while performing the second marriage of mother of the prosecutrix with the accused/appellant.

(ii) That the prosecutrix has just been made a tool for implication of the accused/appellant in the crime in question.

(iii) That a very improbable story has been put forth by the prosecution about commission of rape by the accused on his own daughter.

(iv) That the medical report of the prosecutrix also does not support the case of the prosecution.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the

accused/appellant as described above are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that

prosecutrix (PW-2) and her mother (PW-3) have duly supported the case of the prosecution narrating the manner in which the victim was molested

by her step-father - the accused/appellant herein. According to him, FSL report (Ex.P-11) also supports the case of the prosecution which shows the

presence of spermatozoa on the undergarments of accused and that of the prosecutrix as also the vaginal slides so prepared. According to the State

counsel, the progress report of the prosecutrix of class VIII seized under Ex. P-1 mentioning her date of birth as 4.11.1999 further establishes the fact

that she was minor on the date of incident.

7. Heard counsel for the parties and perused the material available on record.

8. Prosecutrix (PW-2) has stated that after the death of her father, her mother (PW-3) entered into the second marriage with the accused/appellant

and since then she was living with them. She has further stated that when she was in class VIII, the accused/appellant for the first time made physical

relations with her which thereafter continued for about two years. According to this witness, the accused/appellant had also threatened her of being

killed in case she disclosed the incident to anyone, and that he had also got discontinued her studies. The incident of her molestation at the hands of the

accused/appellant was disclosed by the prosecutrix to her mother, maternal aunt and maternal grand-mother. In cross- examination also, this witness

remained firm to what she has stated in the examination-in-chief. Reshma Fatwani alias Manju (PW-3) - mother of the prosecutrix has also supported

the case of the prosecution stating that earlier also the prosecutrix had informed her about being subjected to physical relations by the

accused/appellant and that when she asked him as to why he was doing like that, he told her that he did not spare even his real daughter then how to

leave the step daughter. According to this witness, the accused had threatened her also of being finished in case she opened her mouth elsewhere.

Thereafter, she somehow went to her sister and mother and informed them about the incident and then lodged the report. Dr. Anita Verma (PW-4) is

the witness who medically examined the prosecutrix and gave her report Ex. P-8. According to this witness, the vagina of the prosecutrix easily

entered two fingers and that she was habitual to sexual intercourse. Shobhraj (PW-5) and Suresh Lakhwani (PW-6) have not supported the case of

the prosecution and have been declared hostile. Pawan Singh (PW-7) is the Patwari who prepared spot map Ex. P-6. Dr. (Smt.) Shesha Sexena

(PW-8) is the Forensic Expert who has stated that on examination of the articles produced before her, she found presence of spermatozoa on the

undergarments of the accused, that of the prosecutrix and also the vaginal slides vide Ex. P-11. D.K. Netam (PW-9) is the investigating officer who

has duly supported the case of the prosecution. K.S. Usendi (PW-10) is the witness who assisted in the investigation. Accused/appellant was also sent

for medical examination vide Ex. P-14 and by way of an unexhibited report he was found capable of sexual intercourse.

9. On hearing the counsel for the parties and considering the evidence of the witnesses, in particular that of the minor prosecutrix (PW-2) and her

mother (PW-3) it is established that two year prior to lodgment of report i.e. 4.1.2014, the accused/appellant who happens to be her step father, had

subjected her to forcible sexual intercourse under the threat of life and rustication from the school. Evidence further shows that his incestuous act

continued for a period of two long years and it is when her mother (PW-3) saw him with her own eyes molesting the prosecutrix, the report came to

be lodged. Evidence of PW-3 even goes to show that when she asked the accused as to why he was doing such an indiscreet act, he retorted in the

words that there was no question of sparing the step daughter when he did not leave his real daughter, and saying so he also threatened her of life in

case she opened her mouth anywhere. FSL report also states the presence of spermatozoa on the undergarments of the prosecutrix, that of the accused and also the vaginal slides.

This Court does not find any substance in the argument of counsel for the appellant that the medical report does not support the case of the

prosecution. It is for the reason that when the prosecutrix was raped continuously for two long years, there was no question of any injury on her

private part or any other part of the body. There appears to be no reason for this Court to discredit the evidence of the prosecutrix who has put a

pathetic depiction of being subjected to rape by her step father - the custodian in civilized words. His wolfish conduct in ravishing the teen ager step

daughter instead of providing a caring hand for bringing her up, does not make him plead pardon.

10. Court below has been considerate enough in holding the accused/appellant guilty of molesting the tender-aged prosecutrix by putting her under

threat of life. Its view is based on just and proper appreciation of the material collected by the prosecution. No infirmity is noticeable by this Court in

the well written judgment impugned, and being so it deserves to and is hereby affirmed. Appeal is thus dismissed being without any substance. Being

already in jail, the appellant does not need any direction of being put in prison etc.