

A

NEHRU @ JAWAHAR

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 1279 of 2001)

JUNE 13, 2008

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

C

*Penal Code, 1860 – s. 376 – Rape – Conviction by Courts below – Plea of inconsistency in prosecution version and consent by the victim – Held: In view of the records of the case no inconsistency found – Statement of the victim does not disclose her consent – Conviction justified.*

D

Appellant-accused was tried u/s 376 IPC. Accused took the plea that the prosecutrix consented to the act. Prosecutrix told her age to be 14 years. In her statement she narrated how she struggled to free herself from the accused. Trial Court found her age to be around 16 years, but found absence of consent and convicted the accused. High Court confirmed the conviction.

E

In appeal to this Court, appellant contended that conviction was not called for as the prosecution case was inconsistent as the prosecutrix was said to have been examined by the Doctor (PW 7) at 9.15 A.M., while FIR was lodged at 11 A.M; and that the Prosecutrix in her cross-examination stated that she had consented to the act.

F

Dismissing the appeal, the Court

G

HELD: The appeal lacks merit. Though the Doctor(PW 7) stated that she had examined the prosecutrix at 9.15 A.M., there is some confusion. Ex. P.8 is the document by which the police officer sent the victim for medical examination. The doctor has clearly mentioned the time of examination to be 9.15 P.M. Therefore there is no substance in the plea that examination was at 9.15 A.M.

H

In view of the answers to the questions in cross-examination of the Prosecutrix, the plea of consent is also without substance. [Paras 5, 8 and 9] [1188-F,G &H; 1189-F & G]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
No. 1279 of 2001

From the Judgment and Order dated 5.5.2000 of the High Court of Madhya Pradesh at Jabalpur in CrI. Appeal No. 531 of 1989

Shishir Pinki for the Appellant.

Atul Jha, Dr. Manish Singhvi, D.K. Sinha and Rajesh Srivastava for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1.Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC'). But the sentence of seven years as was imposed by the trial court i.e. the Court of Session Judge, Rajnandgaon was reduced to five years and fine of Rs.20,000/- was imposed under Section 357(1) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). It was held that in case the fine is not paid within the stipulated time, custodial sentence of seven years as imposed by the trial court shall be maintained.

2. According to prosecution in the morning of 10<sup>th</sup> June, 1988 the accused had taken the advantage of the helplessness of the victim and committed rape on her. First Information Report was lodged around 11 A.M., and she was sent for medical examination. The accused after his arrest on 12<sup>th</sup> June, 1988 was sent for medical examination. Certain articles were also sent for chemical examination. After completion of the investigation, charge sheet was filed and the accused pleaded innocence and false implication. The prosecution in order to establish the accusations examined several witnesses including the

A prosecutrix who was examined as PW2 and the Doctor, who was examined as PW 7. The investigating officer was examined as PW 9. PW 8 was the Sub-inspector posted in the Rajnandgaon police station. Before the trial court the prosecutrix stated the age of the victim to be 14 years. Since the accused was taking the plea of consent, the prosecution rely on clause six of Section 375 I.P.C. to contend that consent was of no consequence as she was below 16 years of age. In any event, there was no evidence of any consent. The trial court found the age of the victim to be around 16 years. But it came to the conclusion that there was no consent as claimed by the accused. Accordingly the conviction was recorded and the sentence of seven years imprisonment was imposed alongwith fine of Rs.100/-. As noted above the High Court in the appeal filed by the appellant maintained the conviction and sentence of five years and enhanced the fine to Rs.20,000/-. It was indicated that in case the fine was paid the same was to be given to the victim and in case it was not paid, the sentence imposed by the trial court was to be maintained.

3. In support of the appeal learned counsel for the appellant submitted that there are certain suspicious circumstances; firstly admittedly the FIR was lodged at 11 AM but strangely the Doctor claimed that she examined the victim at 9.15 A.M. Secondly the victim in her cross examination had clearly stated that her consent was there.

4. Learned counsel for the respondent-State on the other hand submitted that the submissions are without substance and are contrary to the evidence on record.

5. We shall first deal the question as to the time when the victim was examined by the Doctor. Though the Doctor PW 7 stated that she had examined her at 9.15 A.M., there is some confusion. Ex. P.8 is the document by which the police officer sent the victim for medical examination. The doctor has clearly mentioned the time of examination to 9.15 P.M. We referred to the original document on record and therefore we find no substance in this plea of learned counsel for the appellant that examination was at 9.15 A.M.

6. So far as the question of consent is concerned, learned A  
counsel for the appellant referred to cross examination of the  
victim, more particularly question No. 10. The question and the  
answer given by the prosecutrix read as follows:

“Q. Is it true that as accused didn't take the wood therefore, B  
you have falsely accused him?”

A. (Witness stated yes, thereupon question was repeated,  
then she stated that) it is not correct.”

(Underlined for emphasis) C

7. The answers at paragraphs 13&14 also relevant, they  
read as follows:

“13. Having taken me inside the school accused unloaded D  
the wood stack I was carrying on my head and told me to go  
inside the room but I didn't go into the room. Thereupon  
accused caught hold me- when I shouted accused gagged  
me and thereafter he took me inside the room and made me  
to lie thereafter he lifted my petticoat. When I hit him with the  
leg he caught hold my leg. I had beaten him with the hand  
also thereupon accused caught hold my hand, when accused E  
released my mouth, I tried to yet, he again gagged me.”

14. The flooring of the room of the school is of stone where  
accused had made me lie on the ground. I tried to release  
myself from the grip of the accused with the result my body  
waist had scratched.” F

8. Above being the position the plea of consent is without  
substance.

9. The appeal lacks merit, deserves dismissal, which we  
direct. G

10. We record our appreciation for the able manner in which  
Mr. Shishir Pinaki, learned Amicus Curiae assisted the Court.

K.K.T.

Appeal dismissed.

H