

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 318 of 2015

- Manoj Ram S/o Tulsiram Aged About 23 years R/o Village - Garam Banada Mohalla Dewar, P.S. - Katkam Sandi, Civil & Revenue Distt. Hazari Bagh (Jharkhand)

---- Petitioner

Versus

- State of Chhattisgarh, Through District Magistrate Jashpur, Distt. Jashpur C.G.

---- Respondent

For Petitioners	:	Smt. Indira Tripathi, Advocate.
For Respondent	:	Ms. Shobha Kashyap, Deputy Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

09/07/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 12.12.2015 passed by the Additional Sessions Judge, Kunkuri, Distt. Jashpur (CG) in Sessions Trial No. 17/2012, whereby and whereunder, after holding the appellant guilty for commission of offence punishable under Sections 363,366 and 376(1) of IPC for abduction of minor from lawful guardianship for the purpose of inducing her for illicit intercourse and rape against the will and consent of prosecutrix PW-1 (name not mentioned), sentenced RI for 5 years, 5 years and 10 years and to pay fine of Rs.500/-, 1000/- and Rs.1,000/- and in default of payment of fine, to further undergo additional RI for 1 year, 1 year and 1 year with a direction to run all the substantive jail sentences concurrently.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned court below has convicted and sentenced the appellant

as aforementioned and thereby committed illegality.

3. As per facts of this case, on 15.02.2011 the prosecutrix was found missing, her father PW-2 Uday Kumar lodged missing report on 17.02.2011, thereafter, the prosecutrix was recovered by the police from the house of her friend Ms. Shobha (PW-4) and the prosecutrix was given to the custody of her father and thereafter, on 18.03.2011 lodged FIR. Kunkuri police registered the FIR as Crime No.46/2011 under aforementioned Sections and started investigation. After obtaining due permission from the concerned authority, the prosecutrix was examined medically. PW-9 Dr. Sangeeta Tirki, after examining the prosecutrix gave her report vide Ex. P/11. Also prepared vaginal swab and handed it over to the concerned Constable and noticed hymen as old torn. Statements of witnesses were recorded under Section 161 of Cr.P.C. The appellant was arrested and duly examined by PW-12 Dr. S. Toppo, who noticed that appellant is capable for committing intercourse and submitted his report vide Ex. P/16. During investigation, the police collected the photocopy of mark-sheet (Ex. P/7). Spot map was prepared vide Ex. P/12. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Kunkuri, who, in turn committed the case to the court of Sessions, Jashpur. Learned Additional Sessions Judge received the case on transfer for trial.
4. During trial, the appellant was charged for offences punishable under Sections 363,366 and 376(1) of IPC.
5. During trial, in order to prove the guilt of the appellant, the prosecution examined as many as 14 witnesses. Statement of appellant was recorded under Section 313 of Cr.P.C wherein he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
6. Charge sheet was also filed against co-accused Suraj and in his absence,

he was declared as absconded by the concerned court.

7. After affording opportunity of hearing to the parties, learned Additional Sessions Judge convicted the appellant and sentenced him as aforementioned.
8. Learned counsel for the appellant vehemently argued that age of prosecutrix is core issue. Ex. P/7 photocopy of mark-sheet has not been admitted by the father of prosecutrix, it was not duly seized, Investigating Officer PW-13 has not said anything regarding recovery of said mark-sheet, no any Kotwari entries are collected, no any birth certificate was produced, also nothing has been seized from the concerned School relating to age of prosecutrix and thereby there is no admissible evidence whatever age is stated by the prosecutrix. Oral evidence of Doctor cannot take place as admissible evidence and since there is no investigation by the Investigating Officer regarding the age on the basis of alleged photocopy Ex. P/7 which is not proved, thereby, prosecution has failed to prove that prosecutrix was minor at the time of incident. On the other part, prosecutrix has not supported the prosecution story regarding abduction with intent to compel her for illicit intercourse or rape against her will and consent. After perusal of entire statement of prosecutrix, this was a love affair, she herself accompanied with the appellant and thereby no any ingredients of Sections 363,366 and 376(1) of IPC are proved by the prosecutrix. Father of prosecutrix also not said anything which leads the case to conviction. Her father even contradicted that Ex. P/7 was collected from him. He said that he gave the mark-sheet which was signed by him, but there was no signature on said document Ex. P/7, thereby, age of prosecutrix is not proved. Any act regarding the ingredients of offence for which the charge is framed, is not proved, and therefore, the trial court has committed apparent error while convicting the appellant, and as such, the appeal may be allowed and the appellant be acquitted of the charges framed against him.

9. Per contra, learned State counsel opposed the arguments advanced on behalf of appellant and submitted that prosecutrix herself stated her age as 16 years in her deposition. Lady Doctor Sangeeta Tirki (PW-9) opined that the age of prosecutrix was 14 years and also in other connected documents regarding medical examination, obtaining sanction for internal examination everywhere prosecution has mentioned the age of prosecutrix as 14 years. Ex. P/7 was proved. As per Ex. P/7, the prosecutrix was minor at the time of incident, thereby no any facts are acceptable that she herself accompanied the appellant. Prosecution has proved its case and therefore, there is no scope for interference, and as such, the appeal may be dismissed.
10. For appreciation of arguments of the parties, I have perused the order impugned and records of the case.
11. Indisputably, the age of prosecutrix is the core issue in this case which may be proved by any of the instruments like entries in the Kotwari register, birth certificate, any other certificate regarding age, declaration of date of birth by School and ossification test. In the present case, Ex. P/7 is the only document which is alleged to be proved the age of prosecutrix. Ex. P/7 is a photocopy, not seized by the Investigating Officer. The Investigating Officer has not said anything regarding collection or seizure of Ex.P/7. Even, the father of prosecutrix contradicted that Ex. P/7 was taken from him. With this, Ex. P/7 is a document without any foundation. Investigation has not made the aforementioned date of birth in the said photocopy by seizure of any School register or any certification from the School. Investigating Officer has not said anything for this exercise. Merely, if the prosecutrix deposed the age during examination before the court or the Doctor while preparing the medical report opined the age which is not based on any document or certificate, the same may be considered as vague statement. Unless the age is proved without any doubt, the statement of prosecutrix in the witness box regarding her age may not be held as conclusive proof. Also if the

Investigating Officer during investigation wrote the age for the purpose of preparation of any document i.e. while obtaining permission for MLC, preparation of seizure memo and on other documents, the age is not automatically proved by simply writing those facts. Thus, I am not agree with the arguments advanced in this behalf by the counsel for State that by simply making statement oral or writing the age of prosecutrix was conclusively proved. In the considered opinion of this court, virtually there is no admissible evidence to prove the status of the prosecutrix as minor at the time of incident. The prosecution has utterly failed to prove that prosecutrix was minor at the time of incident.

12. So far as other evidences are concerned, after perusal of entire statement of the prosecutrix, it goes to show that the prosecutrix has voluntarily left her house with the appellant and remained with his company. There is no any statement of the prosecutrix that appellant committed rape against her will and consent. There is no evidence that appellant kidnapped her with intent to compel her for any illicit intercourse or marriage. Virtually there is no single iota of fact which leads towards the ingredients of the offence for the charges, the appellant was facing trial. By not considering the above facts and circumstances, the trial court has committed an error of law and as such, the judgment of conviction and sentence requires interference.

13. Consequently, the appeal preferred on behalf of the appellant is hereby allowed. The conviction and sentence passed by the trial court against the appellant under Sections 363,366 and 376(1) of IPC is hereby set aside. He is acquitted of the charges. The appellant is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE