

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2723 of 1998

Judgment reserved on : 20.10.2016

Judgment delivered on : 26.10.2016

Geetaram S/o. Puniram Satnami, Aged about 21 years, R/o. Village
Nayapara, Police Station Bilaigarh, District Raipur (M.P.)

---- Appellant

Versus

State of Madhya Pradesh Through Station House Officer, Police
Station Bilaigarh District Raipur (C.G.)

---- Respondent

For Appellant	:-	Mr. C.R. Sahu with Mr. A.D. Kuldeep, Advocates
For Respondent	:-	Mr. Neeraj Sharma, Dy. G. A.

S.B. Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.10.1998 passed by the 2nd Additional Sessions Judge, Baloudabazar, in Sessions Trial No. 533/1996, whereby & whereunder, after holding the appellant guilty for commission of offence punishable under sections 363 & 366 of Indian Penal Code, convicted and sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 1000/- on each count and in default of payment of fine, to further undergo

rigorous imprisonment for 6 months, with a direction to run the sentences concurrently.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. The undisputed fact is that at present accused Geetaram and the prosecutrix are residing in the same village.
4. Case of the prosecution, in brief, is that in the year 1995-96 the prosecutrix was studying in 9th class. On account of failure in studies she started singing Ramayan along with appellant Geetaram, Peelibai and Triloknath. On January 1996, she went to sing Ramayan in the house of Geetaram, in the night at about 2 O'clock, after finishing the programme while she was ready to go home, the appellant came and caught hold the hands of the prosecutrix, grabbed her and took her in a room and pushed her in a cot and committed sexual intercourse without her consent. She started crying with fear, then the appellant told her not to disclose the incident to anybody and assured her that if she did not disclose the incident to anybody then he will marry with her. Thereafter for a long period the appellant/ accused is said to have committed sexual intercourse with the prosecutrix on the pretext of marriage. The appellant is said to have taken the prosecutrix to Shahdol where he kept her in his relative's house. About 15 days prior to lodging report the prosecutrix came alongwith Kaliram (PW-3) and Melaram from Shahdol to her village. Thereafter, she narrated the incident to her mother Gondabai (PW-2) that by the appellant she got pregnant. On 06.08.1996 the prosecutrix (PW-1) along with her

mother went to police station and lodged the First Information Report (Ex.P-1) where the offence punishable under sections 363, 366 and 376 IPC was registered against the appellant.

5. After completion of the investigation, charges were framed against the appellant under sections 363, 366 and 376 of IPC thereafter, the trial Court after framing the charges under section 363, 366 and 376 of IPC, acquitted the appellant from the charges under section 376 of IPC and convicted him under section 363 and 366 of IPC.
6. Smt. Indira Tripathi, learned counsel appearing for the appellant argued that the age of the prosecutrix (PW-1) was on the date of incident was above 18 years and the prosecutrix on her own will went to Shahdol along with the appellant where she married with the appellant. She further argued that the prosecutrix and the appellant were residing together as husband and wife. She further submits that as the evidence available against the appellant is not sufficient to convict the appellant, the conclusion raised by the Trial Court is perverse, the prosecutrix (PW-1) left her home willingly, therefore, the appellant can not be convicted under Section 363 and 366 of IPC and the appellant is entitled to acquittal.
7. On the contrary, Shri Neeraj Sharma, Dy. Government Advocate for the State/respondent supporting the impugned judgment submitted that the conviction and sentences awarded by learned Additional Sessions Judge do not warrant any interference by this Court.
8. Having heard rival contentions of the parties, I have perused the record of Sessions Trial No. 533/1996.

9. Now, I shall examine whether on the date of incident, the age of the prosecutrix (PW-1) was below 18 years.
10. Prosecutrix (PW-1) in her statement has deposed that the appellant and the prosecutrix went to Shahdol for livelihood. She also deposed that she left home alongwith the appellant on her own will and he had not done anything wrong with her. The prosecution after declaring her hostile, has been cross examined and in her cross-examination she had stated that in January 1996 appellant Geetaram had not stopped her and took her in a room in which Ramayan was going on. She further deposed that the appellant had not said her to marry and on the pretext of marriage the appellant committed sexual intercourse with her. The prosecutrix further deposed that she had not got pregnant by the appellant. The prosecutrix had stated that the appellant has not done anything with her. The prosecutrix deposed in para -3 of her deposition that the appellant had kept her in a rented room at Shahdol where they were living as husband and wife. The prosecutrix deposed that the appellant had not left her alone in Shahdol and came back. It is wrong to say that she had lodged any report there. In her cross-examination she has stated that the appellant has not allured her for marriage and she came along with the appellant to her village from Shahdol. At that time her mother was against her marriage, therefore, she lodged the report in the Police Station against the appellant.
11. Gendabai (PW-2) has deposed in her deposition that she was singing Ramayan with the appellant. She has further deposed in

her deposition that the appellant had taken away the prosecutrix to Shahdol.

12. The appellant has been charged under sections 363 and 366 of IPC in order to prove the above offence, prima-facie, it is to be considered that the age of the prosecutrix(PW-1) was below 18 years. The age of the prosecutrix was said to be of 20 years but in the FIR (Ex.P-1) the date of birth was registered as 06.08.1996 in which her age was mentioned as 16 years. In para-5 of her statement it is stated that according to *Dakhil Kharij Register* her date of birth was recorded as 02.07.1979 whereas according to FIR the incident took place in the month of January 1996. in this circumstance, the age of the prosecutrix (PW-1) was shows as 17 yeas, 2 months and 27 days.
13. G. S. Tomar (PW-9) has deposed in his deposition that he was posted as in charge Principal at Govt. Higher Secondary School, Bilaigarh. He further deposed that on 08.07.1995 the prosecution had taken admission in class-9 and her date of birth was recorded as 2.4.1979 in *Dakhil Kharij Register*. He further deposed that he has issued the birth certificate vide (Ex.P.-12). In his cross-examination he has deposed that according to registered date of birth in register and transfer certificate he issued the birth certificate. This witness has not stated anything about admission procedure in class-1.
14. Gendabai (PW-2) has deposed in her deposition that she is the mother of prosecutrix(PW-1). In para-5 of her deposition she has stated that on the date of incident the age of the prosecutrix (PW-1) was 16 years. She further deposed that the age of the prosecutrix

(PW-1) was recorded by increasing 1 year of her actual date given by the father. In the cross-examination, Gendabai (PW-2) has deposed that in which month the prosecutrix (PW-1) was birth is not know and her date of birth was entered in the Hospital register and in the Kotwar register. But in the police report regarding age of the prosecutrix there is no evidence. The statement of the father of the prosecutrix, Indal, has also not been recorded and neither any documents regarding admission was produced while she was admitted in the school. In this circumstance, the case of the prosecution regarding the age of the prosecutrix (PW-1) becomes doubtful.

15. In this context, learned counsel for the appellant placed reliance in the matter of **Sunil v. State of Haryana**¹ in which it has been observed as under:-

"The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

16. Looking to the evidence of prosecutrix Khikhbai (PW-1) and from perusal of records, it appears that the prosecutrix(PW-1) left her parental house willingly. On the date of incident, the age of the prosecutrix was 17 years 2 months and 27 days is doubtful and the

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prosecution has not proved that the prosecutrix was below 18 years on the date of incident. The evidence on record indicates that the prosecutrix willingly went with the appellant. It appears that the prosecutrix did not complain to anybody while she was going with the appellant. It indicates that she had gone with the appellant willingly. In absence of any threat, coercion or inducement having been established by the prosecution, I think it is not possible to rely on the prosecution case and come to the conclusion that the appellant is guilty of the charges framed against him. The prosecutrix (PW-1) had sufficient opportunities to run away from Shahdol where she was kept by the appellant in absence of any threat or coercion or inducement, having been established by the prosecution.

17. For the foregoing reasons, the conviction and sentence awarded by the learned trial Judge to the appellant under Sections 363 and 366 IPC are not sustainable and the appellant deserves to be acquitted.
18. In the result, the appeal succeeds and is allowed. The impugned judgment of conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. He is on bail. His bail bonds are not discharged at this state and shall remain operative for a period of six months in view of the provisions contained under section 437-A of Cr.P.C.

Sd/-
(Anil Kumar Shukla)
Judge