

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 101 OF 2001

Laxminarayan Patel, S/o Vijeetlal Patel, aged about 25 years, occupation Nil, R/o Dimani P.S. Kharsia, District Raigarh (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. Kharsia, District Raigarh (C.G.)

... Respondent

For Appellant	:	Mr. Ashish Shrivastava and Mr. Afroz Khan, Advocates.
For Respondent-State	:	Mr. Ashish Shukla, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

19.10.2016

1. The present appeal under Section 374(2) of CrPC has been preferred by the Appellant assailing the judgment dated 12.1.2001 passed by the Sessions Judge, Raigarh in Sessions Trial No. 98 of 1999. By the impugned judgment, the Court below has found the Appellant to be guilty of having committed the offence punishable under Section 376 of IPC and upon conviction sentenced him to undergo R.I. for 10 years.

2. Case of the prosecution in brief is that the Prosecutrix (PW-1) in the instant case is a minor and it is said that the Appellant on the pretext of marrying the Prosecutrix had initially befriended her and thereafter it is said that he had maintained physical relationship with the Prosecutrix. He got physical more than 4-5 times with the Prosecutrix during the period after December, 1997 onwards when for the first time the Appellant had met the Prosecutrix. Subsequently, it is said that because of physical relationship that the Appellant had maintained with the Prosecutrix she got conceived and finally she gave birth to a baby girl. It is said that after the girl was born, the parents of the Prosecutrix and the Prosecutrix went to the house

of the Appellant asking him to keep the Prosecutrix as his wife on account of the fact that it was his physical relationship with the Prosecutrix by virtue of which she got conceived and gave birth to a baby girl. The Appellant initially said to have refused to marry the Prosecutrix but subsequently asked the father of the Prosecutrix to pay an amount of Rs.3 Lakh to marry the Prosecutrix. It is thereafter that the Prosecutrix and her parents had gone to the Police Station Kharsiya, District Raigarh and lodged an FIR alleging the misdeed against the Appellant stating that on the pretext of marriage the Appellant is said to have ravished the Prosecutrix and in the course she got conceived and also given birth to a baby girl and after conceiving the Appellant is said to have refused to keep the Prosecutrix as is wife.

3. After the necessary investigations were completed, charge-sheet was filed and the matter was put to trial before the Sessions Court at Raigarh where the case was registered as Sessions Trial No. 98 of 1999. During the course of trial the prosecution examined as many as 13 witnesses and no witness was examined on behalf of the defence. After the trial was concluded, the Court below reached to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts of the Appellant ravishing the Prosecutrix a minor girl, and found him guilty of having committed the offence under Section 376 of IPC and upon convicting him for the said offence sentenced him to undergo R.I. for 10 years, leading to the filing of the present appeal.

4. Learned Counsel for the Appellant submitted that the prosecution has not been able to prove its case beyond reasonable doubt and that the prosecution initially has failed to prove the age of the Prosecutrix so far as she being a minor. The second ground is the fact that if the case of the prosecution itself is taken into consideration it would not be a case under

Section 376 of IPC rather it is a case where the Prosecutrix and the Appellant had a consensual relationship and it is a case of consent on the part of the Prosecutrix while maintaining the physical relationship with the Appellant. He further submitted that the Prosecutrix has not been subjected to medical examination so as to determine her age. It was also contended by the Appellant that the prosecution story also stands collapsed on the simple reason of an inordinate delay in lodging of FIR inasmuch as according to the Prosecutrix herself she was first ravished somewhere in December, 1997 but the FIR (Exhibit P-1) has been lodged only after more than 10 months i.e., on 27.10.1998 and thus there is a huge delay of more than 10 months in the lodging of the FIR and the benefit of which should also have gone in favour of the Appellant.

5. According to the Counsel for the Appellant, so far as the age of the Prosecutrix is concerned the only witness who has been examined is PW-2, namely Bedram Sahu, a Teacher of the School where the Prosecutrix has undertaken her initial studies. As per the Counsel for the Appellant, evidence of PW-2 would not be admissible for the reason that he was not the person who has made the entries in the Dakhil/Kharij Register maintained in the School which perhaps was entered by the predecessor of PW-2. He further submitted that even the parents of the Prosecutrix have not been examined who could have stated before the Court that the date of birth entered in the school register was the correct date and it was as per their instructions that the said date of birth was entered in the school register. Thus, according to the Counsel for the Appellant, the evidence of PW-2, Bedram Sahu is not sufficient to establish that the Prosecutrix was a minor.

6. It was further contended by the Counsel for the Appellant that the plain reading of the deposition of the Prosecutrix also would reveal that she had not objected to the Appellant having physical relationship with her. Neither did she resist or protest in any manner which evidently establishes the fact that it was a consensual relationship that was maintained between the two and therefore the conviction of the Appellant for the offence under Section 376 of IPC is not proper and deserves to be set aside/quashed.

7. Learned Counsel for the State however opposing the appeal submits that it is the age of the Prosecutrix which is going against the Appellant inasmuch as the date of birth which has been produced by the Prosecutrix to establish her age is on the basis of the entry made in the admission register maintained in the school where she had undertaken her initial studies. According to the State Counsel, the documents (Exhibits P-4 and P-4C) are the extract of the said admission register maintained in the school where the date of birth of the Prosecutrix is entered as 19.5.1983. That if the said date of birth is taken into consideration the age of the Prosecutrix in December, 1997 when it is alleged that the Appellant for the first time had made physical relationship with her she was only around 14-15 years. Learned Counsel for the State relies upon the decision of the Supreme Court rendered in the case of **State of Chhattisgarh Vs. Lekhram** [2006 (5) SCC 736] to substantiate the contentions of the prosecution in respect of age and date of birth establishing the Prosecutrix to be a minor.

8. In addition, the State Counsel refers to the statement of the Prosecutrix (PW-1) and submits that she has emphatically supported the case of the prosecution by reiterating the same statement what she had initially made at the time of lodging the FIR and also while the statement under Section 161 of CrPC was being recorded. He further submits that

the defence has not been able to extract much from the cross-examination of this witness so as to create a doubt in the mind of the Court to disbelieve the prosecution case. Neither has the defence tried to put any question to the Prosecutrix to disbelieve the age of the Prosecutrix to be more than 15 years at the time of the incident or to disprove the contentions of the prosecution that she was a minor at the relevant time.

9. Having considered the rival contentions put forth on behalf of either side and on perusal of the record and evidence which have come on record, what clearly reflects is the fact that the FIR (Exhibit P-1) was lodged on 27.10.1998 at the behest of the complainant-prosecutrix herself. In the FIR she has categorically narrated the entire incident what had transpired between the Prosecutrix and the Appellant. She has very categorically stated that the Appellant in the instant case used to visit frequently her house. That he had repeatedly given the assurance of marrying the Prosecutrix and to keep her as his wife and would also take her to his house and keep her there. It was also stated by the Prosecutrix that on the said false pretext and assurance of marriage, the Appellant is said to have made physical relationship with her on number of occasions on account of which she got conceived. That after she got conceived the Appellant is said to have disowned her and refused to marry her. Later on, she also gave birth to a baby girl and even after the birth of the child when the Prosecutrix along with her parents had gone to the house of the Appellant he is said to have refused to accept her as his wife and on the contrary is alleged to have also raised a demand of Rs.3 Lakh if he is to marry the Prosecutrix.

10. It is also pertinent to mention that even while the statement of the Prosecutrix was being recorded during the evidence before the Court below she has narrated the same facts without there being much

contradiction, omission and improvement in her stand. Further, from the evidence of the Prosecutrix (PW-1) it also does not reflect that there was any sort of animosity between the Appellant with the family members of the Prosecutrix which could have been the reason for falsely implicating the Appellant. Neither has there been any such question put to the Prosecutrix while she was being examined. Further, from the deposition which has come on record it does not give any remote suggestion as to why the Prosecutrix would falsely implicate the Appellant. Neither has the Appellant been able to bring such a case before the Court below to show that the Appellant has been falsely implicated. In the said factual matrix of the case, there is no reason to disbelieve the statement of the Prosecutrix or the case of the prosecution and this Court is of the opinion that the prosecution has in fact been able to establish its case and the finding arrived at by the Court below of holding the Appellant guilty of having committed the offence under Section 376 of IPC does not warrant any interference.

11. It is trite at this juncture to refer to the decision of the Supreme Court reported in **AIR 2014 SC 384** [State of U.P. Vs. Naushad] wherein a judgment of conviction under Section 376 of IPC passed by the Trial Court was reversed by the High Court and the Supreme Court while setting aside the order of the High Court has held as under :

“12. The accused being related to the prosecution used to often visit her house and took undue advantage of this relationship and kept the prosecutrix under the misconception that he would marry her and committed rape on her for more than two years thereby making her pregnant.he has committed a breach of the trust that the prosecutrix had in him, especially due to the fact that they were related to each other. He thus invaded her person, by indulging in sexual intercourse with her, in order to appease his lust, all the time knowing that he would not marry her. He committed an act of brazen fraud leading her to believe that he would marry her.

13. A woman's body is not a man's play thing and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it. The accused in this case has committed the vile act of rape and deserves to be suitably punished for it."

12. Similar view has also been taken by the Supreme Court in one of its earlier decisions rendered in the case of **Yedla Srinivas Road Vs. State of A.P.** [2006 (11) SCC 615] wherein in paragraph 10 it has been held as under :

"10. It appears that the intention of the accused as per the testimony of PW1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before Panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent."

Further, in para 17 of the said judgment, this Court held that:-

"In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW1 as well as PW6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutor that he would marry her."

Thus, this Court held that the accused in that case was guilty of the offence of rape as he had obtained the consent of the prosecutrix fraudulently, under a misconception of fact."

13. So far as the date of birth is concerned it would be relevant to quote the judgment of the Supreme Court in the case of **Lekhram** (supra) wherein the Supreme Court has held as under :

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of [Section 35](#) of the Indian Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW-5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. Father of the prosecutrix also deposed to the said effect.

13. The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws place for some time and after the 'gauna' ceremony, she came back. The materials on record as regard the age of the prosecutrix was, therefore, required to be considered on the aforementioned backdrop. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.”

14. For the foregoing facts and circumstances of the case and also in the light of the judgments of the Supreme Court cited above, this Court is of the opinion that there is no illegality or perversity in the finding of the Court below in reaching to the conclusion that the Appellant being guilty of the offence under Section 376 of IPC. Thus, the conviction of the Appellant is affirmed/maintained. However, taking into consideration the fact that the appeal is of the year 2001 and in the instant case the Appellant has been on bail all along during the trial as well as during pendency of the appeal except for the brief period of about 2 months after the conviction by the Court below, ends of justice would meet if the sentence imposed upon the Appellant is reduced and brought down to the minimum which could be imposed as per the provisions of law. Accordingly, the sentence imposed

upon the Appellant stands reduced to the period of seven years instead of 10 years.

15. The appeal stands dismissed with the aforesaid modification in the sentence. The Appellant is stated to be on bail. His bail-bonds are cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

Sd/-

(P. Sam Koshy)
Judge

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