

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 763 of 2012**

- Rajuram Paswan S/o Gangaprasad Paswan Aged About 19 Years R/o Village Tamkoli , P.S. Saryasujan , Distt. Kusingar (U.P) At Present Add. Village Sarhapani, P.S. Bagicha , Distt. Jashpur C.G.

---- Appellant**Versus**

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

---- Respondent

For Appellant

Mr. Ram Narayan Sahu along with Mr. Raj Kumar Gupta, Advocates.

For State

Mr. Bhaskar Pyasi, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****01.12.2016**

1. The Appellant in the instant case has been convicted for the offence punishable under Section 376(1) of the IPC and sentenced to undergo R.I. for 7 years with fine amount of Rs. 1000/- and default stipulations vide the judgment dated 04.07.2012 passed by the Sessions Judge, Jashpur in Sessions Trial No. 51/2011.
2. The case of the prosecution in brief is that on 14.01.2011 in the morning an F.I.R. was lodged by PW-3, Jajman alleging that his daughter was found missing from the evening since 12.01.2011 and during the course of the search it was found that she had been taken away by the present Appellant to village Sarhapani under Police Station – Bagicha, District – Jashpur and when they went in search of the Prosecutrix they found the Prosecutrix in the company of the present Appellant and during this period he is said to have had sexual intercourse with her.
3. The Case of the prosecution in the instant case is that the Prosecutrix was a

minor aged around 14-15 years and that even if she had gone with the Appellant with consent, her consent would not be any relevance for the reason that she was a minor at that period of time. Accordingly Crime No. 05/2011 was registered at Police Station – Kansabel, Bagicha District – Jashpur against the present Appellant for the offence punishable under Section 376(1) of the IPC and the matter was put up for trial before the Court of the Sessions Judge, Jashpur vide the Sessions Trial No. 51/2011.

4. During the course of the trial the prosecution examined as many as 11 witnesses and no witness was examined on behalf of the defence. After conclusion of the trial the Court below found the Appellant guilty of having committed the offence and also reached to the conclusion that taking into account the statement of the Prosecutrix as well the opinion of the Doctor who had examined the Prosecutrix, the Prosecutrix was found to be minor aged between 14-15 years and thus the charges against the Appellant was established and he was found guilty of committing offence under Section 376(1) of the IPC and sentenced him to undergo R.I. for 7 years with fine of Rs. 1000/- and default stipulation.
5. It is this judgment which is assailed by the Appellant in the present Appeal.
6. Learned Counsel for the Appellant submits that it is the case where a plain reading of the statement of PW-2 i.e. the Prosecutrix herself. would clearly reflect that it was the case where she had voluntarily gone along with the present Appellant and that she had willingly stayed with the Appellant and further she had also consented and willingly had physical relationship with the present Appellant and therefore the act on part of the Appellant cannot be said to be one under Section 376 of the IPC and the impugned order therefore deserves to be set aside /quashed.
7. He further submits that so far as the age of the Prosecutrix is concerned there is no documentary proof adduced by the prosecution to establish the fact that the Prosecutrix was a minor. In the absence of the proof of the Prosecutrix being minor all the other evidences would clearly suggest that she was a

consenting party to the act and thus prayed for setting aside of the impugned order.

8. Learned State Counsel however opposing the appeal submits that it is the case where the case of the prosecution has been proved beyond all reasonable doubts in as much as the age of the Prosecutrix admittedly both from the ocular evidence as well as from the medical evidence has been proved that she was around 14-15 years. That there was no other proof brought by the accused person in defence to establish or even doubt the age of the Prosecutrix to be more than 14-15 years .
9. Learned State Counsel further submits that it is the case where the deposition of the Prosecutrix even if accepted in its face value even then the offence against the present Appellant is made out only on account of the fact that the Prosecutrix was a minor. The State Counsel further submits that even the Doctor who had examined the Prosecutrix has made a statement that she had been subjected to sexual intercourse as is reflected in paragraph 4 of the deposition of PW-1, Dr. K. Tirki.
10. Learned State Counsel referring to the statement of the father of the Prosecutrix which stands corroborated with the statement of the Prosecutrix, prays for rejection of the appeal.
11. Having considered the rival contention put forth on either side and on perusal of the record what is clearly reflected is the fact that the Prosecutrix was admittedly a minor and that her age appears to have been between 14-15 years as has been stated by her which also got corroborated from the evidence of the Doctor. Further, there is no any piece of evidence adduced by the defence to even doubt the case of the prosecution of the Prosecutrix being a minor. Further it is settled position of law that the deposition of Prosecutrix should not be lightly looked into in the case where the allegation is of rape. The deposition of the Prosecutrix has to be given a paramount importance. That the Prosecutrix in the instant case has categorically stated the fact that during the time she was in the custody of the present Appellant

she was subjected to sexual intercourse on two occasions and this also stands established from the deposition of the Doctor in paragraph 4 where he admits the fact that the Prosecutrix appears to have had sexual intercourse.

12. Further the deposition of the Prosecutrix stands corroborated from the statement of PW-3, Jajman, father of the Prosecutrix who reiterates almost the same version which he had made while lodging the F.I.R at the first instance. There is not much that the defence could extract from the cross examination of these two witnesses. In the absence of creating any doubt in the mind of the Court or there has been any sort of strong cogent evidence to say that the Prosecutrix was a major, this Court finds it difficult to take a different view than what has been taken by the Trial Court while convicting the accused Appellant .
13. Taking into consideration the deposition of the Prosecutrix, the supporting evidence of her father PW-3, Jajman and also other witnesses so far as the medical evidence is concerned, this Court has no hesitation in reaching to the conclusion that the Court below has not committed any infirmity while reaching to the conclusion holding the Appellant guilty of committing the offence under Section 376(1) of the IPC and the same is accordingly affirmed.
14. For the aforesaid reasons this Court does find any strong case made out for interfering with the judgment under challenge.
15. Accordingly the appeal fails and stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE