

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2625 of 1999

1. Ramji Kewat S/o Ramanand Kewat, aged about 22 years, R/o Kuthrod, Police Station Suhela, District Raipur

---- Appellant

Versus

1. The State of Madhya Pradesh through Police Station Suhela, District Raipur.

---- Respondent

For Appellant – Shri Mirza Kaiser Baeg, Advocate.

For Respondent/State – Shri Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

01/03/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28-09-1999 passed by the Second Additional Sessions Judge, Baloda-bazar in Sessions Trial No.123/97 whereby and whereunder after holding the appellant guilty for kidnapping the prosecutrix (minor)(PW-1) from custody of her lawful guardian with intention to compel her for illicit intercourse and for committing rape with the prosecutrix against her consent and will, convicted him under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced the appellant to undergo rigorous imprisonment for 3 years, rigorous imprisonment for 7 years and rigorous imprisonment for 7 years with a direction that all the substantive jail sentences shall run concurrently, also sentenced fine of Rs.500/-, Rs.1000/- and Rs.1000/-, in default of payment of fine, to further undergo simple imprisonment for three months, six months and six months and directed that the period of detention shall be set off under Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Further to note that the accused/appellant was arrested on 22-03-1996 and released on 26-09-1996,

with this, he remained in jail for 6 months and 4 days.

2. Conviction is impugned on the ground that without there being any iota of evidence, the court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 16-03-1996 the prosecutrix (PW-1) was missing, she was minor, aged about 14½ years. Her parents attempted to search her and on 19-03-1996 when she returned, on being asked, she informed her parents that the accused/appellant offered her to marry and took her with him and for three days committed sexual intercourse against her will and consent and the prosecutrix got opportunity to escape from the custody of the accused/appellant she managed to reach her house. On 20-03-1996 father of the prosecutrix reached to Suhela police and lodged the report against the accused/appellant. Police registered the crime No. 22/96 under Sections 363, 366 and 376 of the IPC against the accused/appellant. After obtaining necessary consent the prosecutrix was examined by Doctor Rama Tiwari (PW-6) who after examination noticed hymen ruptured, there was redness and swelling over the private part, she assessed her below the age of 18 years. She gave her report and prepared the slide of the swab taken and referred the same for chemical analysis, and she also noticed spot over the clothe of the prosecutrix and referred the same for chemical analysis. Police collected the evidence regarding the date of birth of the prosecutrix. As per the register of the school, her date of birth was 5th April, 1980 as shown in the article A. During the investigation, radiological examination of the prosecutrix was conducted. Doctor Naveen Khanna (PW-15), RMO, Medical College Raipur after radiological examination assessed the age of the prosecutrix as between 14 to 15 years, he gave his report Ex.-P/20. Doctor A.K.Soni (PW-9) examined the accused/appellant after his arrest and found him capable of committing sexual intercourse. He gave his report accordingly and also referred the undergarment for chemical analysis regarding presence of semen and human spermatozoa.

Police recorded the statements of the witnesses under Section 161 of the Code and after completion of the investigation charge sheet was filed before the Additional Chief Judicial Magistrate Baloda-bazar on 06-05-1996 who registered the matter as Criminal Case No.605/96 and committed the same vide order dated 20-12-1996. The learned Additional Sessions Judge received the case on transfer and conducted the trial. He framed the charges under Sections 363, 366 and 376(1) of the IPC.

4. In order to prove the guilt of the accused/appellant, the prosecution examined 16 witnesses in all. The statement of the accused/appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

5. After providing opportunity of hearing to the parties, the learned trial Judge convicted and sentenced the appellant as aforementioned.

6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

7. Learned counsel for appellant would submit that the statement of the prosecutrix is not of sterling nature, there are many omissions and contradictions on material points, as there is no eye-witness, hence, it would not be safe to convict the accused merely on the basis of the statement of the prosecutrix. Also as per the school register the date of birth of the prosecutrix was 5th April, 1980 and the date of incident is 16-03-1996, with this, she was just about 21 days short for the age of 16 years, on the other hand, as per radiological examination the age was noticed between 14 to 15 years, so there are difference of opinion in radiological examination and the date of birth recorded in the school. As the prosecutrix of her own went along with the accused/appellant and the age of the prosecutrix is under cloud, the accused/appellant may be acquitted by offering him benefit of doubt.

8. Per contra, learned counsel for the State/respondent opposed the argument advanced on behalf of the appellant and would submit that the prosecution successfully proved that at the time of incident the prosecutrix was below the age of 16 years and as the prosecutrix was below the age of 16 years her consent, though argued not admitted, cannot be held as consent as per law as she was not of age to accord her consent for the intercourse. Also the redness, swelling in the private part goes to show the forceful intercourse and also as the prosecutrix was minor for all means, i.e., below the age of 18 years, without consent of parents of the prosecutrix as per law she cannot be taken from the custody of the parents. With this, the trial Court, had not committed any error in convicting the accused/appellant. Also the sentence awarded cannot be held as on the higher side. Consequently, the appeal may be dismissed on both the counts.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced during the trial.

10. Upon minute examination of the statement of C.R. Dhruv (PW-11), the Head Master of the school where the prosecutrix was admitted for her studies, it goes to show that as per article A, the date of birth is 5th April, 1980. Also on perusal of the statement of Manohar Singh Kanwar (PW-16) who has recorded the date of birth on the basis of article C and the statement of Doctor Naveen Khanna (PW-15) wherein he stated that the age of the prosecutrix as per radiological examination was between 14 to 15 years and in the cross-examination Doctor Naveen Khanna (PW-15) fairly admitted that as per medical jurisprudence difference is of two years, after consideration of the entire material, it goes to show that by all the means the prosecution successfully proved that the prosecutrix was below the age of 16 years at the time of the incident and with this, she was minor.

11. As per settled law, below the age of 18 years consent of the lawful



guardian are required. In the present matter any consent if at all was of no help for the appellant as the prosecutrix was not lawfully authorized to give consent to accompany the accused/appellant and as she was below the age of 16 years her consent also for the sake of argument given for intercourse cannot be taken as a lawful consent. After perusal of the entire evidence of the prosecutrix (PW-1), I do not see any reason to disbelieve the entire version of the prosecutrix for the point that she was taken by the accused/appellant and she was subjected for intercourse for which she was not competent for any of the consent.

12. On due consideration, I do not see any reason to interfere with the findings of the Court below regarding conviction awarded to the accused/appellant. So far as sentence awarded by the trial Court are concerned, the same also cannot be held on higher side. Consequently, quantum of sentence also does not require any interference by this Court.

13. Consequently, the appeal filed by the accused/appellant has no substance and the same is liable to be dismissed. Thus, the appeal is accordingly dismissed.

14. Registrar (Judicial) is directed to send copy of this judgment to the Court below with a direction to serve the remaining part of the sentence to the accused/appellant by the Court below by taking appropriate steps under the law under intimation to Registry.

15. The appellant be served with the remaining part of the sentence in the matter.

16. Appeal dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE