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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 150 of 2001

- Birjula S/o Jatiram Dhobi, aged about 23 years, R/o Village Chainpur, P.S., Tah. & Dist: Korba, Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh through P.S., Tah. & Dist: Korba, Chhattisgarh.

---- Respondent

For Appellant
For State

Mr. M.K. Baeg, Advocate
Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

06.02.2017

1. The present Appellant stands convicted for the offence under Section 376 IPC and have been sentenced to under R.I. for 7 years and to pay fine of Rs. 1000/- with default stipulation.
2. The relevant facts in brief is that an F.I.R. was lodged at Police Station Korba on 12.02.1998 by the Prosecutrix herself. In the FIR she alleged that about one month prior to the date of the lodging of the F.I.R. the present Appellant is said to have finding the Appellant alone near the Nala in the morning at around 6 am caught hold of her and forcefully committed sexual intercourse. On the said date

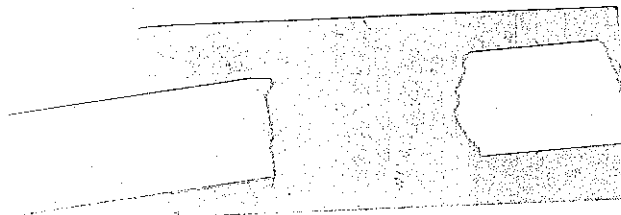




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the Appellant is said to have also threatened the Prosecutrix for dire consequences in case she discloses the same to any person. Subsequently, the Appellant is said to have established physical relationship with the Prosecutrix continuously on several occasion within a period of one month on the pretext of marrying her. The Prosecutrix also when the Appellant is said to have given assurance of marriage did not raise any objection while having physical relationship with the Appellant. Later on it is said that the Appellant refused to marry the Prosecutrix and on the contrary decided to get married to one Rajkumari a different lady. It is then the Prosecutrix PW-4 lodged the F.I.R. and prayed for action against the Appellant. While lodging the report the Prosecutrix had stated herself to be aged about 16 years and as such she was a minor on the date when the Appellant is said to have ravished her. Another aspect which is to be considered is the fact that on the date of incident i.e. in the year 1998 she was a minor under the unamended provision of Section 376 IPC.

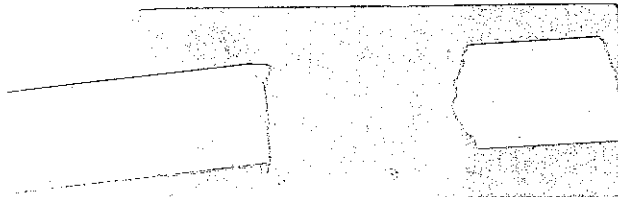
3. Based upon the F.I.R. lodged by the PW-4 the case was registered vide Crime No. 99/98 at Police Station Korba. In due course after investigation the charge sheet was filed and the matter was put to trial before the Additional Sessions Judge Korba Sessions Trial No. 365/98. In all 12 witnesses were examined on behalf of the prosecution and one witness was examined on behalf of the defence. After conclusion of the trial the Court below found that the

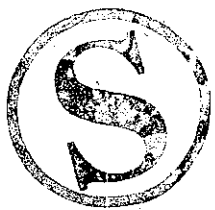


Prosecutrix was minor and that the date of birth was proved from the Kotwari Register on the examination of the Kotwar. In the Kotwari Register the date of birth of the Prosecutrix was registered as 08.04.1980 and thus finding the Appellant guilty of having committed the offence the trial Court convicted and sentenced him as mentioned in the first paragraph of this judgment.

4. Learned Counsel for the Appellant submits that the age of the Prosecutrix has not been properly established in as much as there was no proof whatsoever so as to determine the actual date of birth of the Prosecutrix. He also contended that the Kotwar is not the person who has made the entry in the Kotwari Register. He can not be presumed as a proper witness to prove the date of birth. Further according to the Counsel for the Appellant the conduct of the Prosecutrix as well as from her deposition it clearly depicts that she was a consenting party for the physical relationship that she had with the present Appellant. Therefore, since she was a consenting party to the physical relationship offence under Section 376 IPC is not made out and thus prayed for the setting aside of the impugned judgment.

5. Learned State Counsel on the contrary opposing the appeal submits that so far as the consent of the Prosecutrix is concerned it is immaterial for the reason that the record itself shows that she was of the age around 16 years at the time of incident, thus, she was a minor for all practical purposes. Therefore, even if there has





been consent it is of no consequence because the Prosecutrix was a minor. It was further contended by the State Counsel that the deposition of the Prosecutrix PW-4 itself inspire sufficient confidence beyond all reasonable doubts and thus the case of the prosecution stands fully established. There is also no rebuttal to her deposition of the appellant ravishing and later maintaining a physical relationship on the pretext of marriage and therefore also there is no scope of interference with the impugned judgment of conviction and the appeal accordingly deserves to be rejected.

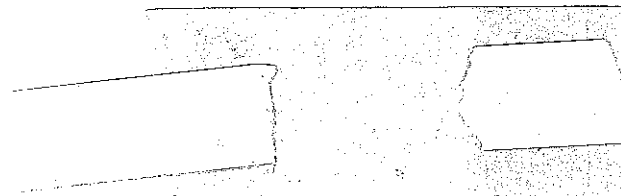
6. Having heard the Counsel for the parties and on perusal of the record what clearly reflects is the fact that an F.I.R. Ex.P/5 was lodged on 12.02.1998 wherein the Prosecutrix is said to have alleged that the Appellant in the instant case initially committed rape upon her forcefully about one month prior to the date of lodging the FIR. Like wise she also submits that subsequently the Appellant is said to have on the pretext of marriage has further abused her physically and continued having physical relationship on many occasions. Finally the Appellant is said to have breached the promise and married another lady. From the cross-examination which has been done on PW-4 there is no substantial material drawn by which statement of the Prosecutrix can be doubted or for that matter, there is no contradiction or omission found in the FIR as well as in the initial statement given to the Police Authorities compared with the one made before the Court so as to doubt the





prosecution version. Further from the evidence of PW-1, Kotwar Dilharan Das Ex.P.2 was produced before the Court below to prove date of birth of the Prosecutrix where the date of birth of the Prosecutrix was entered as 08.04.1980. Thus it establishes the fact that the Prosecutrix at the time of the incident was around 16 years and thus indisputably was a minor. It is further reflected from the evidence that the statement of the Prosecutrix further stands corroborated. from the deposition of PW-8 mother of the Prosecutrix, Phoolkunwar who has also narrated in the same manner as narrated by the Prosecutrix. There is not much discrepancies or contradiction in the statement of PW-8 when compared with the facts as narrated by the PW-4 the Prosecutrix.

7. In the light of the fact admittedly the Prosecutrix being a minor at the time of the incident ground of consent which has been taken as a defence is of no consequence. The Provision of law itself holds that any physical intercourse with minor with consent would also fall within ambit of 376(1) of the IPC in the eye of law.
8. The Counsel for the Appellant has not been able to show any striking feature by which deposition of the Prosecutrix could be doubted nor has the Appellant been able to establish before the Court any good ground which gives rise to suspicion on the prosecution story or makes the prosecution case to be doubtful or falsify the case levelled against the Appellant. In the absence of which the statement of the Prosecutrix has to be accepted as the



facts narrated by the Prosecutrix in her deposition has not been rebutted in any manner.

9. It is settled position of law that so far as the offence under Section 376 is concerned the statement of the Prosecutrix has to be given due weightage. In the present case there is not much which stood rebutted from the evidence of the Prosecutrix so as to either disbelieve the statement or even doubt the statement of the Prosecutrix. Thus, in the opinion of this Court the impugned order does not suffer from any illegality or infirmity calling for interference.
10. Thus the present appeal being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge