

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2075 of 2000**

1. Dhakad @ Ramlal, aged about 25 years, son of Goverdhan Yadav, R/o Indra Nagar, District Raigarh, M.P. (now Chhattisgarh)
2. Tihalu @ Sohan, son of Manbodh Uraon, aged about 24 years, R/o Riyapara (Surapara), Tahsil and District Raigarh, M.P. (now Chhattisgarh)

---- Appellants**versus**

The State of Madhya Pradesh (now Chhattisgarh) through the District Magistrate, Raigarh

--- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****7.12.2017**

1. This appeal is directed against the judgment dated 29.7.2000 passed in Sessions Trial No.166 of 1996 by the 2nd Additional Sessions Judge, Raigarh convicting and sentencing the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363/34 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.200/- with default stipulation
Under Section 366/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

2. Case of the prosecution, in brief, is that father of the prosecutrix (PW5), aged about 16-17 years, had died and she was residing with her mother. She was having a love affair with co-accused Santosh (deceased). In the night of 1.7.1996, co-accused Santosh enticing her that they will live together somewhere, took out her from her home and kept her at the house of accused/Appellant Dhakad. Thereafter, Appellant No.1 Dhakad, Appellant No.2 Tihalu

and co-accused Santosh took her to Kharsiya. Appellants No.1 and 2 returned after leaving co-accused Santosh and the prosecutrix at Kharsiya. Sattu (PW1), uncle of the prosecutrix lodged First Information Report (Ex.P1) on 2.7.1996. The prosecutrix and co-accused Santosh were recovered from Kharsiya and took back. Dr. Arti Nande (PW11) medically examined the prosecutrix and gave her report (Ex.P10). Dr. M.D. Joshi (PW10) conducted ossification test of the prosecutrix. He opined that the age of the prosecutrix was 15-16 years. His report is Ex.P9. On completion of the investigation, a charge-sheet was filed against Appellant No.1 Dhakad, Appellant No.2 Tihalu and co-accused Santosh for offences punishable under Sections 363, 366, 376, 34 of the Indian Penal Code. Charges were framed under Sections 363/34, 366/34 and 376 of the Indian Penal Code against co-accused Santosh, under Sections 363/34 and 366/34 of the Indian Penal Code against Appellant No.1 Dhakad and under Sections 363/34 and 366/34 of the Indian Penal Code against Appellant No.2 Tihalu.

3. During pendency of the case before the Trial Court, co-accused Santosh died.
4. In support of its case, the prosecution examined as many as 12 witnesses. Statements of the present Appellants were recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.
5. After trial, the Trial Court convicted and sentenced the present Appellants as mentioned in the first paragraph of this judgment.

Hence, this appeal.

6. Learned Counsel appearing for the Appellants argued that there is no evidence on record against the present Appellants. The prosecutrix and co-accused Santosh (deceased) were in love affair with each other. The prosecutrix had gone out of her home on her own will. At that time, none of the present Appellants was present with the prosecutrix or with co-accused Santosh. The present Appellants did not entice the prosecutrix to come out of her home. Therefore, the Appellants deserve to be acquitted of the charges framed against them.
7. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
9. Sattu (PW1), uncle of the prosecutrix has deposed that the prosecutrix was living with her mother in his neighbour. On the next day of the incident, he received information that the prosecutrix was not present at her home. He heard that one neighbour Santosh (co-accused) was also not present at his house. He lodged the FIR (Ex.P1), but did not support the case of the prosecution and was declared hostile.
10. Laxmibai (PW2), mother of the prosecutrix has stated that her daughter (the prosecutrix) was not present at home in the morning. She had left a letter at home to the effect that she had left the home. It was heard by her that a neighbour Santosh (co-accused) was also missing.
11. Santosh (PW3) and Nankibai (PW4) have also deposed that the

prosecutrix and co-accused Santosh had absconded from their houses.

12. The prosecutrix (PW5) has stated in her Court statement that she had gone to Kharsiya along with co-accused Santosh on her own will. She has further stated that she had stayed at the house of relative of co-accused Santosh for about 3-4 days. Co-accused Santosh had put vermilion on her head in a temple and they were living together as husband and wife. She has categorically stated that the present Appellants had not gone along with them nor Appellant No.1 had taken her to the house of any of his relatives. She has admitted that at that time her age was about 17-18 years and she had gone along with co-accused Santosh with her consent and she married him on her own will.
13. Jamunabai (PW6), who is the witness of seizure memo (Ex.P5, P6 and P7), has not supported the case of the prosecution and has been declared hostile. Tilmatabai (PW7), who is also the witness of seizure memo (Ex.P5, P6 and P7), has supported the case of the prosecution and stated that vide Ex.P5 underwear of the prosecutrix, vide Ex.P6 her vaginal slide and vide Ex.P7 underwear of co-accused Santosh were seized.
14. Sumitrabai (PW8), who is the witness of seizure memo (Ex.P4), has not supported the case of the prosecution and has been declared hostile.
15. Dr. R.K. Agrawal (PW9), who examined co-accused Santosh and gave report (Ex.P8), has deposed that co-accused Santosh (deceased) was capable to perform sexual intercourse. Dr. Arti Nande (PW11), who examined the prosecutrix and gave report

(Ex.P10), has stated that the prosecutrix was habitual to sexual intercourse and no definite opinion could be given regarding recent sexual intercourse with her. Dr. M.D. Joshi (PW10), who conducted ossification test of the prosecutrix and gave report (Ex.P9), has made an opinion in his said report that age of the prosecutrix was 15-16 years with possibility of an error of +/- 2 or 3 years on both sides.

16. Station House Officer Sadhna Singh (PW12) is the witness who investigated the offence in question. She has supported the case of the prosecution.
17. On minute examination of the evidence on record, it reveals that at the time of incident, age of the prosecutrix was certainly above 16 years. As per her Court statement, she herself left her home. Later on, she married with co-accused Santosh at Kharsiya and was residing with him there. There is nothing on record to show that co-accused Santosh or the present Appellants enticed the prosecutrix and took her away from her home. There is nothing on record to show that the present Appellants assisted the prosecutrix in her coming out of her home. Thus, no offence is made out against the present Appellants.
18. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge