

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1005 of 2011**

- Rajkumar Toppo S/o Madhuram Toppo, aged about 23 years, Occupation - Labour, R/o village - Kurwan, Indira Awas, Police Station Vishrampur, District Sarguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through the Station House Officer, Police Station - Vishrampur, District Sarguja (C.G.)

---- Respondent

For Appellant.	-	Ms. Upasana Mehta under the authority of
		Shri Dharmesh Shrivastava, Advocate.
For Respondent	-	Shri Lav Sharma, P.L.

Hon'bel Shri Justice Pritinker Diwaker**Judgment On Board****08/09/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 30.09.2011 passed by I Additional Sessions Judge, Surajpur, District Sarguja, in S.T. No.542/2010 convicting the accused/appellant under Sections 363, 366 and 376 (2) (f) IPC & sentencing him to undergo R.I. for seven years with fine of Rs.50/-, R.I. for seven years with fine of Rs.50/- and R.I. for ten years with fine of Rs.50/-, plus default stipulation respectively.

02. As per the prosecution case, on 14.08.2010 FIR (Ex.P/3) was lodged by Samal Sai (PW/2), father of the prosecutrix (PW/1), alleging in it that the prosecutrix aged about 12 years is missing from 09.08.2010. Based on this FIR, on 13.08.2010 the prosecutrix PW/1 was recovered from the custody of the accused/appellant and offence under Sections 363 and 376 IPC was registered against him. On

14.08.2010 the prosecutrix was medically examined by Dr. (Smt.) Rashmi Kumar (PW/3) who gave her report Ex.P/4 noticing that secondary sexual characters were well developed, no any external injury was noticed, vagina was normal, hymen was ruptured, bleeding occurred due to menstrual, no slides could be taken due to menstruation and vagina was easily admitting one finger. The Doctor has further opined that the sexual intercourse was done with her and she was habitual for sexual intercourse. After investigation, charge sheet was filed against the accused/appellant under Sections 363 and 376 IPC, however, the trial Court has framed the charges under Sections 363, 366 and 376 (2) (f) IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 05 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits that the accused/appellant has been falsely implicated in the crime in question and from the conduct of the prosecutrix PW/1 it appears that she was a consenting party to the act of the accused/appellant. Learned counsel further submits that after serving the entire sentence the accused/appellant has been set free.

06. On the other hand, supporting the impugned judgment it has been argued by learned State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He further submits that on the date of commission of offence, the prosecutrix was less than 12 years of age.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Prosecutrix (PW/1) while supporting the prosecution case has stated that the accused/appellant took her forcibly to his relatives' house and there he committed forcible sexual intercourse with her. In cross-examination, she remained firm. Samal Sai (PW/2) is father of the prosecutrix at whose instance FIR (Ex.P/3) was lodged. He has stated that he was informed by the prosecutrix that the accused/appellant had taken her to his relatives' house where he committed sexual intercourse with her. Dr. (Ms.) Rashmi Kumar (PW/3) medically examined the prosecutrix vide Ex.P/4 and stated that secondary sexual characters were well developed, no any external injury was noticed, vagina was normal, hymen was ruptured, bleeding occurred due to menstrual, no slides could be taken due to menstruation and vagina was easily admitting one finger. The Doctor has further opined that the prosecutrix was subjected to sexual intercourse. Pradeep Tirkey (PW/4) is the Headmaster who proved the date of birth of the prosecutrix to be 03.06.1999 vide Ex.P/6. R.N. Bhagat (PW/5), Investigating Officer, has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that the prosecutrix PW/1 went missing from 09.08.2010 and on 13.08.2010 she was recovered from the custody of the accused/appellant. The prosecutrix

PW/1 stated that she was taken forcibly by the accused/appellant to his relatives' house where he committed forcible sexual intercourse with her. Statement of prosecutrix finds corroboration from the medical evidence (Ex.P/5), according to which, hymen was ruptured, vagina was easily admitting one finger and the sexual intercourse was done with her. Further, Pradeep Tirkey (PW/5), Headmaster, who proved the mark list (Ex.P/6) of the prosecutrix wherein her date of birth was recorded as 03.06.1999 clearly established the fact that on the date of commission of offence the prosecutrix was below 11 years of age i.e minor. Moreover, nothing has been elicited by the defence as to why the appellant has been falsely implicated in the case and thus the stand of false implication taken by the accused/appellant is not worth acceptance. Defence has not been able to substantiate the plea of false implication by satisfactorily explaining as to why the accused/appellant would be falsely implicated in this case rather all the witnesses have supported the prosecution case.

10. Thus, this Court is of the considered opinion that the evidence of the prosecutrix being completely trustworthy inspire confidence. The judgment of the trial Court convicting the accused/appellant under Sections 363, 366 and 376(2) (f) of IPC is well founded and does not call for any interference in this appeal.

11. In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-

(Pritinker Diwaker)

Judge