

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 945 of 2001**

- Uttam Kumar, Son of Pardeshi, aged about, 25 years, R/o.Village Dulna, P.S. Gobranavapara, District Raipur C.G.

---- Appellant**Versus**

- The State Of C.G. Through :O.I.C. of P.S. Gobranavapara, District Raipur, C.G.

---- Respondent

For Appellant	:	Shri K.D. Kuldeep, Advocate.
For State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****12-07-2018**

- 1 This appeal arises out of the judgment of conviction and order of sentence dated 20.08.2001 passed by learned III Additional Sessions Judge, Raipur, C.G. in Sessions Trial No. 164/2000, the appellant stands convicted and sentenced as under:-

Serial No.	Conviction	Sentence
1.	Under Section 363 of Indian Penal Code (for short 'IPC').	4 years R.I. and fine of Rs. 1,000/- in default of which 02 months R.I.
2.	Under Section 366(A) of IPC.	5 years R.I. and fine of Rs. 1,000/- in default of which 02 months R.I.

3.	Under Section 376(1) of IPC.	7 years R.I. and fine of Rs.2,000/- in default of which 04 months R.I.
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2 As per prosecution case, on 08.04.2000 at about 18:00 hrs. father of the prosecutrix PW-2 Panchuram lodged FIR Ex.P-2, against the accused/appellant alleging *inter alia* that on 06.04.2000 in the evening, when the complainant sat to take his dinner, his second daughter (prosecutrix) aged about 14 years served him meal and went out from the house. After some time, complainant went out to search for her daughter but he could not find her and after searching, he came back. Thereafter, on the next day, when Kevra Bai elder daughter of complainant went to the well to fetch water, she heard that prosecutrix was in the house of appellant/accused and when the complainant went to search for prosecutrix, he saw that one Bodhani Yadav had taken away prosecutrix to the appellant's house. At that time, in the presence of Duaram Sahu, Bodhani Yadav, Cherkin Bai and Omprakash Sahu & father of the prosecutrix enquired her, then she narrated the story about the accused/appellant that he was alluring prosecutrix to provide ornaments, clothes, marry with her and ready to keep her as mistress (wife) in his home then on this allurements of appellant/accused, the prosecutrix went out with the appellant/accused to his home, after that information

received from prosecutrix, PW-2 (Panchuram) lodged FIR against appellant/accused. At the time of incident, the age of prosecutrix was about 14 years. During investigation, prosecutrix and other witnesses i.e. Panchuram, Duaram, Bodhani Bai, Cherkin Bai and Omprakash in their statement under Section 161 Cr.P.C. have alleged regarding forcible sexual intercourse with the prosecutrix.

- 3 As per Ex. P-1 clothes of prosecutrix was seized. Spot map Ex.P-5 was prepared by Patwari. Prosecutrix was medically examined by PW-16 Dr. Neeta Bhatnagar. The accused/appellant was also examined by PW-3 Dr. C.B. Gupta and was found to be capable of performing sexual intercourse vide Ex. P-3 and the date of birth certificate Ex.P-10A was seized from village Kotwar (Agam Das). Forensic report Ex. P-19 prepared by Senior Scientist and underwear, panty and slide mentioned in Ex.P-19 found semen and spermatozoa.
- 4 After completion of investigation, charge sheet under Sections 342, 363, 366 and 376 IPC was filed against appellant/accused. The trial Court framing the charge against appellant/accused under Sections 363, 366 and 376(1) IPC, the trial Court after conclusion of the trial sentencing the accused/appellant as mentioned in para 1 of this judgment.

- 5 So as to hold the accused/appellant person guilty, the prosecution has examined 16 witnesses. Statement of accused 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, In defence, he examined only one witness Keshar Bai (DW-1).
- 6 The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in Para 1.
- 7 Counsel for the appellant submits as under:-
- i) There is no definite opinion regarding the age of the prosecutrix was made by prosecution and there is contradiction between Kotwari Book entry and school certificate.
 - ii) No medical opinion was given by Doctor regarding sexual intercourse committed on prosecutrix.
 - iii) Major contradictions and omissions between the statement of witnesses examined in Court and their statement

under Section 161 Cr.P.C.

- iv) Prosecutrix herself admitted that she went to the house of appellant by her own will. She also admitted that she had never narrated anybody about rape.

8 On the other hand, counsel for the respondent/State supports the judgment of conviction and sentence of trial Court and has been argued that conviction of the appellant is strictly in accordance with law and there is no illegality and infirmity warranting interference by this Court. The prosecution proved the age of prosecutrix and she was minor at that time. Forensic report also supports the prosecution case and there is no reason to disbelieve the prosecution case regarding rape.

9 I have heard the counsel for the respective parties and perused the evidence on record.

10 PW-2 Panchuram father of the prosecutrix stated that at the time of incident, age of prosecutrix was 14 years and that statement was not challenged in any manner, in cross examination and otherwise. As per father of the prosecutrix, the age of the prosecutrix was 14 years and she was minor. Statement of prosecutrix's father also supported by village Kotwar PW-9 Agam Das in Kotwari Panji Ex. P-10A and the

age of prosecutrix mentioned in that Kotwari Panji Ex. P-10A, date of birth was 16.06.1985, that means at the time of incident prosecutrix age was below 15 years.

11 The age of the prosecutrix was below 15 years according to Ex.P-10A and proved by PW-9 Agam Das (Kotwar). Ex. P-9 is a seizure memo. Birth and death report form was registered by village Kotwar and in that register entries were made. Ex. P-10A has been duly proved by Agam Das and there is no reason to disbelieve the said certificate.

12 PW-15 Chunnilal Chandrakar stated in his examination that according to Primary School Register Ex.P-21, when prosecutrix was admitted in school in serial no. 1158, date of birth was 20.06.1985 and those entries made in the school register have also been proved which shows that at the time of incident, the age of prosecutrix was below 15 years.

13 As regards contradiction in School register and Kotwari Panji, there was four days gap in Kotwari Panji and School register i.e. 16.06.1985 and 20.06.1985, but that contradiction is not of such a nature which could lead to an inference that at the relevant time the prosecutrix was not a minor, in particular when the witnesses, as discussed above, have stated in clear terms that the prosecutrix was below 15 years at the date of incident and the documents pertaining to the age of the prosecutrix have been duly proved by the

author of the same.

14 PW-1 Prosecutrix stated that when she was roaming in garden at about 2 P.M. the accused/appellant met her and promised to marry her and further allured to give ornaments and clothes. On this, the prosecutrix went with appellant/accused and thereafter appellant/accused had committed 3-4 times sexual intercourse with Prosecutrix in his home and other places (i.e. garden & near side river) also he committed rape with prosecutrix. Then Bodhni Bai, (Maternal Aunt of Prosecutrix) took her away from the appellant/accused's house and, thereafter, father of the prosecutrix lodged FIR against accused/appellant. In her cross examination, she admitted that she was entered the house of appellant/accused by jumping from the back side of wall. In paragraph 6, she admitted that no incident was happened with her and she never narrated anybody about rape. That major portion specifically mentioned in her chief examination that where a place of occurrence made by prosecutrix cannot be denied, even PW-2 Panchuram also narrated regarding rape committed by appellant/accused and PW-11 Omprakash also stated that on certain allurements the accused/appellant committed sexual intercourse with prosecutrix.

15 PW-2 Father of the prosecutrix stated that the prosecutrix

informed about the incident to her Maternal Aunt and Mother, who in turn disclosed about the same to him.

16 PW-3 Dr. C.B.Gupta medically examined the appellant and found accused/appellant capable of performing sexual intercourse.

17 PW-4 Ransjeeven Yadav, Patwari prepared the spot map Ex.P-5. PW-5 Mukund Bihari Rai, PW-8 Vishwanath, PW-13 Raju Sakhe are formal witnesses. PW-6, Prahalad Singh, PW-7 Devnarayan Sahu, Police Personnel, assisted in the investigation. PW-11 Omprakash is the Sarpanch of the village has stated that on being enquired the prosecutrix disclosed to her family members in his presence that on certain allurements the accused/appellant committed sexual intercourse with her. PW-12 Bodhani Bai (Maternal Aunt of the Prosecutrix) has supported the version of the prosecutrix. PW-14 D.R. Sapre, Investigating Officer has duly supported the prosecution case. PW-15 Chunnilal Chandrakar, Head master has stated about the date of birth of the prosecutrix and also produced the admission register of the school for the relevant period. PW-16 Dr. Neeta Bhatnagar, medically examined the prosecutrix. One Defence witness Keshar Bai, DW-1 has not stated any specific reason in favour of the appellant/accused.

18 As per the FSL report Ex.P-19 underwear of accused, panty

and slide of prosecutrix examined by Senior Scientist found semen and spermatozoa.

19 Regarding the age of prosecutrix in the preceding paragraphs, it has already been observed that on the date of incident the prosecutrix was minor, below the age of 15 years. From the over all evidence available on record, oral, documentary as well as medical & forensic report, it is clear that the appellant/accused had committed sexual intercourse with the prosecutrix. It is also proved that accused/appellant committed sexual intercourse with the prosecutrix below the age of 15 years girl child, kidnap from lawful guardianship, she may be forced for seduce to illicit sexual intercourse and below the age of 15 years girl child was raped by the accused/appellant. Even if, it is presumed that the said act was with the consent of the prosecutrix, it would be to no help to the appellant/accused because the prosecutrix was a minor below the age of 15 years on the date of incident and as such her consent was of no consequence. On the basis of aforesaid discussion, this Court is of the opinion that the finding of guilt recorded by the trial Court is based on just and proper appreciation of the evidence on record and being so, the same is hereby affirmed.

20 In the result, the appeal fails and is, accordingly dismissed.

21 Accused/appellant is on bail since 08.09.2003. His bail bond is cancelled and he is directed to surrender and to be taken into custody forthwith to serve the remaining part of the sentences awarded to him.

Sd/-
Gautam Chourdiya
Judge

Akhilesh