

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2536 of 1999

Ganga Ram, S/o Suna Ram Uraon, aged about 24 years, Occupation Agriculturist, R/o Village Tirsonth, P.S. Pathalgaon, District Raigarh, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Ms. Savita Tiwari, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

2.8.2018

1. This appeal is directed against the judgment dated 30.6.1999 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.86 of 1997 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 342 of the Indian Penal Code	Rigorous Imprisonment for 1 year
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 7 years
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 10 years
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years

2. Prosecution case, in brief, is that on the date and time of incident, the prosecutrix (PW6) was aged about 15 years and was residing with her parents at Village Tirsonth. On 5.2.1997 at about 10:00

p.m., when she was returning after participating in a *jalsa* dance programme, allegedly, near the house of Dewar Uraon, the Appellant caught her and saying that he will keep her as his wife, took her along with him to his house. There, he committed forcible sexual intercourse with her thrice. It is further alleged that in the next morning, after locking the door of his house from outside, the Appellant went away. In the same morning, father of the prosecutrix and other villagers reached to the house of the Appellant, opened the door of the house and she came out of the house. A village meeting was convened in which she narrated about the incident. On 8.2.1997, First Information Report (Ex.P4) was lodged by her. She was medically examined by Dr. R. Toppo (PW12). Her report is Ex.P7 in which she did not find any injury on any part of the body of the prosecutrix. She found that hymen of the prosecutrix was ruptured and 2 fingers were easily being inserted into her vagina. She opined that sexual intercourse was done with the prosecutrix. She advised for x-ray examination for determination of age of the prosecutrix. Ossification test of the prosecutrix was conducted by Dr. M.D. Joshi (PW8). His report is Ex.P8 in which he opined that the age of the prosecutrix was between 16½ and 18 years with variation of 3 years on both sides. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 363, 366, 342 and 376 of the Indian Penal Code followed by framing of charges against him under Sections 342, 363, 366 and 376 of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as

13 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant is innocent and he has been falsely implicated in the case. Virtually, there was a love relationship between the Appellant and the prosecutrix. The prosecutrix herself went away with the Appellant and the alleged incident took place with her consent. She further submits that apart from the ossification test report, there is no documentary evidence available regarding age of the prosecutrix. As per the ossification test report also, her age was found to be between 16½ and 18 years with variation of 3 years on both sides. Therefore, it is established that at the time of alleged incident, the prosecutrix was above 18 years. Since she was a consenting party, no offence is made out against the Appellant and thus, he deserves acquittal.
6. Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and

perused the record with due care.

8. The prosecutrix (PW6) has stated in her Court statement that after participating in the *jalsa* dance programme, when she was returning home, near the house of Devaram, the Appellant caught her and dragged her towards his house. There he caused her to fall down and thereafter he committed rape with her thrice. In the morning at 8:00 a.m., her family members reached there. The Appellant had locked the door of his house from outside. When they got the lock opened, she came out of the house. She has further stated that one week prior to that also, the Appellant had committed rape with her about which she had not disclosed to anyone. In paragraph 6 of her cross-examination, she has admitted the fact that when the Appellant was dragging her towards his house, people of the locality had seen them. She has further admitted the fact that when the Appellant tried to have physical relationship with her, she had not resisted him. She has also admitted the fact that since the Appellant had already developed a physical relationship with her, she did not resist him at that time. In paragraph 5 of her cross-examination, she has also stated that she did not know about her date of birth and her brother Turjan (PW5) is 1½ years younger to her.
9. Rajaram (PW1) is uncle of the prosecutrix. He has stated that on the date of incident, the prosecutrix had gone for participating in a *jalsa* dance programme. Next day, in the morning, Bhairi came to him and told that the Appellant had kept the prosecutrix closed in his house. They went to the house of the Appellant. They found that the Appellant had locked the door of the house and was not

opening it. They got the lock opened and brought the prosecutrix back to home. The prosecutrix told at home that the Appellant had taken her to his house by gagging her mouth and there he had committed rape with her thrice. Dhansai (PW2) is father of the prosecutrix. He has also stated in similar fashion. In his cross-examination, he has admitted that in the night, when the prosecutrix did not return home, they had not gone out for searching her. He has further admitted the fact that the prosecutrix herself had gone to the house of the Appellant or she was taken by the Appellant to his house is not known to him. He has also admitted that in the village meeting, the prosecutrix had refused to live with the Appellant because the Appellant told that he will marry her after 10 years and thereafter the FIR was lodged. In paragraph 3 of his cross-examination, he has categorically stated that he was unable to state when had the prosecutrix taken birth and what is her date of birth.

10. Turjan (PW5) is brother of the prosecutrix. He has stated that when he came to know that the prosecutrix is kept closed in the house of the Appellant, they went there. There they saw that the door of the house was locked. When they opened the lock, they saw that the prosecutrix was standing inside the house and the Appellant was not present there. This witness has categorically stated that he was aged about 17 years and the prosecutrix is elder to him.
11. Dr. R. Toppo (PW12) is the witness who examined the prosecutrix on 10.2.1997. She has stated that during medical examination of the prosecutrix, she did not find any bodily injury. In internal

examination, she found that her hymen was ruptured. 2 fingers were easily being inserted into her vagina. She found that sexual intercourse was done with her, but she could not state about the duration that when was the intercourse done with her. Her report is Ex.P7. She had also advised for ossification test of the prosecutrix for determination of her age.

12. Dr. M.D. Joshi (PW8) conducted x-ray examination of the prosecutrix. He has stated that his report is Ex.P8 in which he opined the age of the prosecutrix to be between 16½ and 18 years with variation of 3 years on both sides.
13. G.R. Bhagat (PW13) was the Investigating Officer of the offence in question. He has stated that he had investigated into the offence.
14. On a minute examination of the evidence adduced by the prosecution, it is clear that as stated by the prosecutrix (PW6), before the date of the present incident also, sexual intercourse was done with her by the Appellant. At that time, she had not disclosed about the same to anyone. From the statement of the prosecutrix, it is also clear that due to that previous physical relationship, she had not resisted the Appellant at the time of the present incident. From her statement, it is further clear that when the Appellant was taking her to his house, people of the locality had seen them, but she did not raise any alarm. Thus, it seems that the prosecutrix was a consenting party to the act done with her. There is no documentary evidence available regarding age of the prosecutrix except the ossification test report (Ex.P8). In their examination

before the Court, father of the prosecutrix and the prosecutrix herself were not able to explain her exact date of birth. The prosecutrix has admitted the fact that her own brother Turjan (PW5) is 1½ years younger to her. Turjan has stated that his age was 17 years. From the above, it seems that the prosecutrix was more than 18 years of age on the date of incident. The ossification test report also reveals that her age was between 16½ and 18 years with variation of 3 years on both sides. Thus, it is established that the prosecutrix was more than 18 years of age. Since she was a consenting party, no offence is made out against the Appellant.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
16. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
17. 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