

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on 16/07/2018**

**Judgment Delivered on 19/07/2018**

**CRA No. 482 of 2002**

- Ugrasen @ Feta S/o Budhram Muriya, age-23 years; R/o Kalepal, P.S. Frazerpur, Distt.- Bastar (Chhattisgarh)

**---- Appellant**

**Versus**

- The State of Chhattisgarh Through: P.S. Frazerpur, District- Bastar (Chhattisgarh).

**---- Respondent**

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| For Appellant        | : Mr. R. N. Jha, Advocate.        |
| For Respondent/State | : Ms. K. Tripti Rao, Panel Lawyer |

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**Hon'ble Shri Justice Gautam Chourdiya**  
**Judgment (C.A.V.)**

1. This appeal arises out of the judgment of conviction and order of sentence dated 18.04.2002 passed by the learned 4<sup>th</sup> Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 490/2001 convicting the accused\appellant under Section 376 of IPC and sentencing him to undergo RI for five years with fine of Rs. 500/-, in default of payment of fine to further undergo RI for six months.
2. Brief facts of the case are that on 29.08.2001 FIR (Ex.P-1) lodged by prosecutrix, aged about 17 years alleging in it that prior to two years of lodging the FIR, when prosecutrix alongwith her friend Teejo were going to see the dance show on the occasion of

Ganesh Festival, at that time the appellant/accused met her in the field and promised to marry her and without her consent committed sexual intercourse with her and after this incident continuously two years, accused/appellant made physical relation with her and when she became pregnant, this pregnancy came to knowledge of her family members, she also informed about the pregnancy to her friend Teejo and one Mahadai. Prosecutrix also informed the accused/appellant regarding the pregnancy and when he refused to marry her, then FIR (Ex.P-1) was lodged by the prosecutrix on 29.8.2001.

3. As per seizure memo ExP/3 School Certificate (Ex.P-3A) was seized. Prosecutrix was medically examined by Dr. Shashikala Thakur (PW-9) and she found the prosecutrix was having 30 – 32 weeks child in her womb. Dr Shashikala Thakur (PW-9) has prepared the medical report (Ex.P/13). Vaginal slide has been prepared by Dr. Shakala Thakur (PW-9) and was handed over to the police authority as per seizure memo (Ex.P/4) for chemical examination. The accused/appellant was also medically examined by Dr. M. Mahilang (PW-6) and was found to be capable of performing sexual intercourse. After completion of investigation, charge sheet has been filed by the concerned authority against the accused/appellant under Section 375, 376 & 493 of the Indian Penal Code.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the circumstances

appearing against him in the prosecution case, pleaded innocence and false implication, whereas none of the witnesses have been examined as defence witness.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in paragraph 1 of this Judgment.

6. Learned counsel for the appellant submitted as under:-

(i) On the date of incident, prosecutrix was not below the age of 16 years. This fact is also admitted by the prosecutrix (PW-1) in paragraph 8 of her deposition recorded by the trial Court.

(ii) On the first day of incident at Murdabhata when accused/appellant committed sexual intercourse with her she did not resist the same. She never informed her parents about the incident. Therefore, It is clear a case of voluntarily consent of the prosecutrix.

(iii) Prosecutrix was a fully grown-up girl. She understood her wellbeing. Finding of the learned trial Court about consent given by the prosecutrix runs contrary to the record and the same cannot be said to be due to misconception of fact where it is a clear cut case of consent by the prosecutrix, as such, judgment of the trial Court is based on no cogent evidence and material on record so it is liable to be set aside.

(iv) The judgment of conviction and order of sentence recorded by the trial Court is invalid and improper and not

in accordance with law.

7. On the other hand, learned State Counsel opposes the submission made by counsel for the appellant and argued that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. I have heard learned counsel appearing for the parties and perused the material available on the record.
9. Firstly, it would be appropriate to consider the age of the prosecutrix (PW-1). On the first date of incident, prosecutrix (PW-1) was not below then 16 years, this finding is given by the learned trial Court in page No. 2 & 3 of its judgment. According to the statement of father of the prosecutrix-Bodka (PW-2), in para-6 of his deposition he has stated that when he admitted her daughter in school she was 6 years and in para-7 he stated that the date of birth was mentioned in school certificate vide Ex.P-3A is approximate and not absolutely correct. Prosecutrix (PW-1) has admitted in para 12 of her statement that she is unable to say that at the time of recording of statement, her age is 20 years or not. Dr. Govind Singh (PW-8) did ossification test (Ex.P-11) regarding her age and he found prosecutrix above 16 years and below 19 years, when she was examined. The findings given by the trial Court regarding the age of the prosecutrix in page No. 2 & 3 of its judgment holding that the prosecutrix was not below the age of 16 years at the relevant time of incident. Age of the prosecutrix was not challenged by anybody, So, it is held that on the date of incident, the prosecutrix was not below the age of 16

of years.

10. PW-1 prosecutrix stated in paragraph No. 1 to 5 of her statement that for the first time, at Murdabhata accused/appellant committed sexual intercourse with her and at that time accused promised to marry her after this incident, accused/appellant on many times committed sexual intercourse with the prosecutrix because of which, she become pregnant and when she informed the accused/appellant about her pregnancy, the accused/appellant had given some medicine to her for abortion of the child.
11. After this incident, Panchayat of the village was called by father of the prosecutrix but accused/appellant was not present in that Panchayat, then FIR was lodged. Prosecutrix continuously for two years maintained physical relation with the accused/appellant from the first day of incident at Murdabhata when accused committed sexual intercourse, she never stopped the accused and this fact is admitted by the prosecutrix in paragraph 8 of her statement.
12. Entire statement of prosecutrix reveals that from the first day of incident till two years, she never narrated incident to her parents or anybody. When she became pregnant, FIR was lodged. She never narrated the fact that accused/appellant refused to marry her in her statement recorded before the trial Court.
13. In the matter of **Tilak Raj Vs. State of Himachal Pradesh, reported in AIR2016 SC406**, the Supreme Court has held as under:-

“ 19. ....It is admitted by the prosecutrix in her testimony before the trial court that she was in relationship with the appellant for the last two years prior to the incident and the appellant used to stay overnight at her residence. After a perusal of copy of FIR and evidence on record the case set up by the prosecutrix seems to be highly unrealistic and unbelievable.”

“20. The evidence as a whole including FIR, testimony of prosecutrix and MLC report prepared by medical practitioner clearly indicate that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. In fact, the said act of the appellant seems to be consensual in nature.”

14. The fact that accused was in contact with the prosecutrix for a long time is also admitted by the father of the prosecutrix (PW-2) in his statement and he had knowledge about the pregnancy of the prosecutrix in the month of June-July and he also called Panchayat but since no decision was taken in the Panchayat then FIR (Ex. P/1) was lodged on 29.8.2001. At the time when the father of the prosecutrix came to know about the pregnancy of the prosecutrix, he never reported the incident to the police authority.
15. Mother of the prosecutrix- Laxmi (PW -4), also admitted this fact in para 9 of her deposition that prosecutrix was 19 to 20 year of age, It means that prosecutrix was fully developed physically and mentally.
16. Entire evidence adduced by the prosecution, in particular of the prosecutrix (PW-1), Bodka (PW-2), father of the prosecutrix, Laxmi (PW-4), Mother of the prosecutrix it is not proved that the accused/appellant without consent of the prosecutrix committed rape or the sexual intercourse with her forcibly. There is no evidence on record to show that accused refused to marry her.

There is also no any reliable evidence against the accused/appellant that he committed sexual intercourse with the prosecutrix continuously for two years without her consent.

17. If the facts of the case are examined in the light of the judgment of the Supreme Court in the matter of Tilak Raj (Supra), I am of the view that facts of the present case is similar to that of above mentioned judgment of the Apex Court.

18. According to discussion of the entire evidence of the prosecution as mentioned above, there is no reason to disbelieve that prosecutrix was consenting party to the act of the appellant.

19. After due consideration of material available on record, I am of the considered opinion, that this appeal deserves to be allowed. Accordingly, the appeal is allowed and the impugned judgment is hereby set aside. Appellant is acquitted of the charge under Section 376 of IPC.

20. The appellant is reported to be on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C.. The appellant shall appear before the higher Court as and when directed.

Sd/-

**(Gautam Chourdiya)**  
Judge