

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 10.08.2018****Judgment delivered on : 06/10/2018****CRA No. 541 of 2003**

- Rajendra @ Dhannu, S/o Ganesh Satnami, aged about 20 years, R/o Village- Domuhani, Police Station- Torva, District- Bilaspur, (C.G.).

---Appellant**Versus**

- State of Chhattisgarh, through District Magistrate, District- Bilaspur, (C.G.).

---- Respondent

For Appellant : Shri Malay Kumar Bhaduri, Advocate.
For Respondent/State : Shri Manish Nigam, Panel Lawyer.

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****06 /10/2018**

This appeal is directed against the judgment and order dated 24.03.2003 passed by the Third Additional Sessions Judge, Bilaspur in Session Trial No. 417/2002 convicting the accused/appellant under Section 376(1) of IPC and sentencing him to undergo R.I. for four years and fine of Rs. 500/- plus default stipulation.

2. As per prosecution case, at Village- Domohani Dhenka, police station Torva, Kumari Usha (prosecutrix) resides with her grand mother and grand father namely Ramesh. On the eve of Holi festival, accused/appellant Rajendra applied colour on the face of prosecutrix

and said that he loves her and wants to marry. Three days thereafter, at night when prosecutrix went to attend the nature's call, near the kitchen garden, accused/appellant came and again repeated the same version and abducted the prosecutrix and committed sexual intercourse against her will. After the incident they left for Delhi from Bilaspur Railway Station and stayed there for 3 months where he committed sexual intercourse with the prosecutrix. After sometime, prosecutrix showed her desire to return to her parents' house and they came back to Takhatpur from Delhi and stayed there for 15 days. Sibu Ram Kewat, father of the prosecutrix, lodged a report regarding the missing of his daughter namely Kumari Usha (prosecutrix) which was registered in *Rojnamcha Sanha* No. 34, and on that basis police registered offence against the accused/appellant and arrested him for alleged commission of offence under Section 376(1) and 366 IPC. Prosecutrix was medically examined by Dr. Neelima Sharma (PW-9), and she gave her report vide Ex. P/8. After completion of investigation, charge-sheet was filed against the appellant for the offence under Sections 363, 366 and 376(1) of IPC followed by framing of charge by the court accordingly.

3. So as to hold the accused/appellant guilty, prosecution examined as many as 15 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial court has convicted and sentenced the accused/appellant as mentioned above in Para 1 of this judgment.

5. Counsel for the accused/appellant submits that the appellant moved an application for transfer of case before juvenile justice board as after amendment, the age of juvenile is fixed for 18 years. Learned trial court convicted accused/appellant only on the point that accused/appellant is capable of committing sexual intercourse. By the order dated 31.12.2002, prayer made by the accused/appellant was dismissed, which is illegal and contrary to the provisions of law. The learned trial court failed to see that the prosecutrix is more than 16 years of age. In her evidence she has stated that they reside in Village Domohani Dhenka and with her consent they went to Delhi and stayed there for 3 months. She has nowhere stated about the abduction, kidnapping or forcible sexual intercourse by the accused/appellant. Looking to the statement of the prosecutrix, she was a consenting party but the learned trial court has wrongly held the accused/appellant guilty. Prosecution has failed to prove its case beyond reasonable doubt. The learned trial court did not go through the medical report submitted by Dr. Gendlal, the Radiologist properly where the age of the prosecutrix was 15 to 17 years and also two year margin given in the report. So looking to this evidence, age of the prosecutrix is more than 16 years and she is a consenting party because she wanted to marry the appellant. Dr. Neelima Sharma has also not given any opinion with regard to sexual intercourse but the trial court has wrongly convicted the appellant.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that findings recorded by the court below convicting the accused/appellant under Section 376(1) of IPC is strictly in accordance with law and there is no infirmity in the same.

7. The issue raised for consideration in this appeal is whether the accused/appellant herein was a juvenile on the date of commission of the offence i.e. on 01.04.2002. The issue was raised before the trial court but the trial court has rejected appellant's prayer on 31.12.2002. Enough evidence has been placed on record by the appellant to prove that he was minor on the date of commission of the offence which could not be remitted by the State. In the school mark-sheet, appellant's date of birth is 06.06.1984, therefore, on the date of commission of offence i.e. on 01.04.2002, the appellant's age was 17 years and 10 months.

8. In the matter of **Hari Ram Vs. State of Rajasthan (SCC P. 228, para 68)** it was held in Para 68 is as under:-

“68..... a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.”

The said judgment was subsequently followed in the decision of **Ajay Kumar Vs. State of Madhya Pradesh (2010) 15 SCC 83.**

9. Under Section 15 of the Juvenile Justice Act, it is provided that if the Board is satisfied on inquiry that a juvenile has committed an offence, then the Board may pass different types of

orders as mentioned in sub-section (1) of Section 15 of the Juvenile Justice Act. One of the orders that is contemplated under the said provisions is to make an order directing the juvenile to be sent to a special home for a period of three years. That appears to be maximum period for which the juvenile could be kept in a special home.

10. In the light of aforesaid provision, the maximum period for which a juvenile could be kept in special home is for three years. In this case appellant has undergone detention for a period of about 2 years which is more than half of maximum sentence prescribed under Section 15 of Juvenile Justice Act. In that view of the matter, since the appellant herein was a minor on the date of commission of the offence, this Court allows the appeal of the appellant. Since the appellant has already been enlarged on bail by this Court on 30.07.2003, no further order is necessary as regards his detention.

12. In the result the appeal is allowed with a direction that the appellant be released forthwith. Accordingly, the appeal stands allowed in terms of the aforesaid extent.

Sd/-
(Rajani Dubey)
Judge

