

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.227 of 2003

Nehru, S/o Nanhuram Ravat, aged about 45 years, occupation agriculturist,
R/o Village Dumarmuda, P.S. Kotwali, Raigarh, District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Raigarh, Chhattisgarh

--- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

9.8.2018

1. This appeal is directed against the judgment dated 27.11.1999 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.20 of 1999 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 31.10.1998, the prosecutrix (PW1), aged about 15 years, lodged First Information Report (Ex.P1) alleging that 5 months prior to lodging of the FIR, at about 8:00 a.m., the Appellant called her at his house for doing some work. She went to his house. There, the Appellant

threatened her and committed rape with her. Thereafter, she returned home and due to shyness, she did not disclose the incident to anyone. It is further alleged that thereafter also the Appellant, alluring her that he will marry her, used to take her to his house and commit sexual intercourse with her and due to that, she got pregnant. He gave her some pill as a result of which her pregnancy aborted. It is further alleged that even thereafter, he used to call her at his house and commit sexual intercourse with her. As a result of which, she again got pregnant. Thereafter, she told the whole incident to her parents. A panchayat meeting was called in which the Appellant refused to keep her with him. After lodging of the FIR (Ex.P1), she was medically examined by Dr. Madhu Dubey (PW2). Her report is Ex.P2 in which she opined that the prosecutrix was carrying pregnancy of about 32 to 34 weeks. Ossification test of the prosecutrix was done by Dr. M.D. Joshi (PW3). His report is Ex.P3 in which he opined that the age of the prosecutrix was between 16½ and 18 years. Regarding date of birth of the prosecutrix, *Dakhil-Kharij* (Admission-Transfer) Register (Ex.P10) was seized from Assistant Teacher Baikunthnath Gupta (PW11). In the said register, her date of birth is mentioned as 12.2.1984. 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 Section 376 of the Indian Penal Code. Charge was framed against him under Section 376 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 15 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 has been falsely implicated in the case. From the statement of the prosecutrix, it is clear that she was a consenting party to the act done with her. She further submits that though as per the *Dakhil-Kharij* Register (Ex.P10), the date of birth of the prosecutrix is 12.2.1984, entry of this date of birth was made by whom is not established nor the person who made this entry has been examined before the Court. Thus, the *Dakhil-Kharij* Register has no evidentiary value. She further submits that as per the ossification test report (Ex.P3), age of the prosecutrix was between 16½ and 18 years. It is settled law that there is variation of 3 years on either side. Therefore, the prosecutrix was more than 18 years of age. Since she was a consenting party, no offence is made out against the Appellant. Reliance has been placed on **2015 (5) CGLJ 571 (Sona Mahto v. State of Chhattisgarh)**.
6. Per contra, 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 (PW1) has stated before the Court that the Appellant, saying her that her elder mother was calling her, took her to his house, closed the door of his house and after gagging her mouth with a cloth, he committed rape with her. He threatened her that if she discloses the incident to her parents, he will kill her. She has further stated that thereafter he committed sexual intercourse with her 5-6 times. Due to that, she got pregnant, but she did not disclose about her pregnancy to her parents. The Appellant took her to a doctor at Mimida and there the said doctor gave her an injection as a result of which her pregnancy aborted. The Appellant had told her that he will keep her as his wife, therefore, she did not disclose the incident to anyone. She has further stated that thereafter the Appellant used to call her at his house and commit sexual intercourse with her and when nobody remained present at her house, he used to come to her house also and commit sexual intercourse with her there. She again got pregnant. Then she told about this to her parents. A village meeting was called in which the Appellant refused to keep her with him. Thereafter, she lodged the FIR (Ex.P1). In paragraph 10 of her cross-examination, she has categorically admitted that whenever the Appellant committed sexual intercourse with her, she felt pleasure and, therefore, she had been visiting him as and when she was called by him. She has further stated that if the Appellant is ready to keep her as his wife, she will go with him. She has further stated that in the village meeting, when the Appellant refused to keep her with him then she lodged the FIR.

9. Ghasiram (PW5), father of the prosecutrix has stated that when the prosecutrix was carrying a pregnancy of about 5 months then on being asked, she told that the pregnancy was from the Appellant. A village meeting was called in which the Appellant refused to keep the prosecutrix with him.
10. Parmanand (PW6), Gopal (PW7) and Ruknibai (PW8) have also stated the same as stated above by Ghasiram (PW5).
11. Dr. Madhu Dubey (PW2) examined the prosecutrix on 1.11.1998. She has stated that her report is Ex.P2 in which she opined that the prosecutrix was carrying a pregnancy of about 32-34 weeks.
12. Ghasiram (PW5), father of the prosecutrix has been unable to state about date of birth of the prosecutrix. In paragraph 9 of his cross-examination, he has stated that at the time of birth of the prosecutrix, he got an entry of her birth registered in the Kotwari Register. But, no Kotwari Register has been produced by the prosecution.
13. Assistant Teacher Baikunthnath Gupta (PW11) has proved the *Dakhil-Kharij* Register (Ex.P10) of the Primary School, Dumarmuda. According to Ex.P10, the date of birth of the prosecutrix is 12.2.1984. He has admitted the fact that in support of the entry of the date of birth of the prosecutrix, no Kotwari Register or any other document is annexed.
14. Dr. M.D. Joshi (PW3) is the witness who conducted ossification

test of the prosecutrix. He has stated that his report is Ex.P3 in which he opined that the age of the prosecutrix was between 16½ and 18 years.

15. A minute examination of the above evidence makes it clear that the prosecutrix was a consenting party because she never made any complaint about the incident. When she got pregnant second time then she informed about the incident to her parents. From her statement, it is also clear that the Appellant had committed sexual intercourse with her many times for which there had been her consent. She has categorically admitted that whenever the Appellant committed sexual intercourse with her, she felt pleasure and, therefore, she used to visit him as and when he called her. Thus, it is clear that she was a consenting party. As regards her age, her father Ghasiram (PW5) has been unable to state her date of birth. As stated by Ghasiram, he had got the entry of date of birth of the prosecutrix registered in the Kotwari Register, but no Kotwari Register has been produced by the prosecution. As per the *Dakhil-Kharij* Register (Ex.P10), the date of birth of the prosecutrix is 12.2.1984, but the person who made the entry of this date of birth has not been examined and when this entry was got registered has not been established. Therefore, the said *Dakhil-Kharij* Register has no evidentiary value. As per the ossification test report (Ex.P3), age of the prosecutrix was between 16½ and 18 years. It is settled law that there is variation of 2 to 3 years on either side. From the above, it is clear that the age of the prosecutrix was more than 18 years. Since she was a consenting party and her age was more than 18 years, no offence under Section 376 of the Indian Penal Code is made out against the

Appellant.

16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
17. 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.
18. 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