

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.592 of 2001

Nohar Sai, S/o Laxman Sai, aged about 18 years, resident of Aurai Khurd,
P.S. Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh

--- Respondent

For Appellant	:	Shri Gurudev I. Sharan, Advocate
For State/Respondent	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.1.2018

1. The instant is an appeal against the judgment dated 25.6.2001 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Bilaspur in Special Criminal Case No.76 of 2000 convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 6 years and fine of Rs.300/- with default stipulation

2. Facts of the case, in nutshell, are that at the relevant time, the prosecutrix (PW2), aged about 15 years, was studying with the accused/Appellant in a same school and they had become friends. On 28.10.1999, the prosecutrix lodged First Information Report (Ex.P1) alleging that about 6 months before the Appellant, enticing her that he will marry her, took her to the agricultural field and committed sexual intercourse with her there. Thereafter also, he made sexual relationship with her frequently from time to time. As a result thereof, she became pregnant. She asked the Appellant to marry her, but he avoided. She told about the fact to her parents.

Her parents asked the Appellant to marry their daughter (the prosecutrix), but the Appellant again refused. Thereafter, the prosecutrix lodged the FIR (Ex.P1). The prosecutrix was medically examined by Dr. Rama Ghosh (PW5). Her report is Ex.P3 in which she opined that the prosecutrix was carrying a pregnancy of 30-32 weeks. On completion of the investigation, a charge-sheet was filed against the Appellant under Section 376 of the Indian Penal Code and Section 3(1)(xii) of the Act of 1989. Charges were framed against him under Section 376 of the Indian Penal Code and Sections 3(2)(v) and 3(1)(xi) of the Act of 1989.

3. To bring home the offence against the Appellant, the prosecution examined as many as 7 witnesses. The Appellant was also examined under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded innocence. 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 argued that even if the entire allegation is taken as it is, it seems that the prosecutrix was a consenting party. There is no clinching evidence on record to show that the prosecutrix, at the time of occurrence, was below 16 years. Since she was a consenting party and her age was above 16 years, no offence is made out against the Appellant.
6. On the contrary, Learned Counsel appearing for the State/Respondent supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. The prosecutrix (PW2) has stated that at the relevant time, she along with the Appellant was studying in a same school. She was studying in 9th standard and the Appellant was studying in 10th standard. A friendship had been developed between them. She has further stated that one day when the school was closed she went to the field. The Appellant met her there and committed sexual intercourse with her despite her refusal. She has further stated that the Appellant called her to the school in the night. She went to the school. There also he again committed forcible sexual intercourse with her. She has further stated that thereafter also the Appellant frequently committed sexual intercourse with her in the school from time to time. As a result thereof, she became pregnant. When she informed the Appellant about her pregnancy, he went to Bhopal. After 2-3 months, he returned to the village. She again informed him that she was carrying a pregnancy of 3-4 months. Thereafter, both of them went to a doctor. The Appellant asked her to get the pregnancy aborted, but she refused. Thereafter, her parents came to know about her pregnancy. A panchayat meeting was also convened in the village in which the Appellant admitted that he was responsible for her pregnancy. Thereafter, her father left her in front of the house of the Appellant. The door of the house of the Appellant was closed. Thereafter, she went to the police station and lodged the FIR (Ex.P1).
9. Phoolsai (PW1), father of the prosecutrix and Bhukhinbai (PW3), mother of the prosecutrix have supported the statement of the prosecutrix and deposed that they came to know about the

pregnancy of their daughter (the prosecutrix) from the villagers and, therefore, they called a panchayat meeting in the village. In the said meeting, the Appellant admitted that the prosecutrix became pregnant from him.

10. Dr. Rama Ghosh (PW5) examined the prosecutrix on 28.10.1999. Her report is Ex.P3 in which she opined that the prosecutrix was carrying a pregnancy of 30-32 weeks.
11. From the statements of the prosecutrix and her parents, it is clear that the Appellant had been committing sexual intercourse with the prosecutrix and, therefore, she became pregnant. The prosecutrix has nowhere stated that the Appellant committed sexual intercourse with her frequently enticing her that he will marry her. From the statement of Dr. Rama Ghosh (PW5), it is also clear that at the time of examination, the prosecutrix was carrying a pregnancy of 30-32 weeks.
12. From the above, it is clear that the prosecutrix (PW2) was a consenting party to the act done with her by the Appellant.
13. As per the prosecution story, the prosecutrix (PW2), at the time of incident, was aged about 15 years. She and her parents have not stated her date of birth. Her father Phoolsai (PW1) has stated in his Court statement that at the time of incident age of the prosecutrix was 15 years. In paragraph 7 of his cross-examination, he has categorically stated that he did not know the date, month or year of birth of the prosecutrix. He has further admitted that even at the time of admission of the prosecutrix in the school, he did not know the date, month or year of the birth of the prosecutrix. At that time, he had told the school teacher that he wanted to get the

prosecutrix admitted in the school and he may record her date of birth as per his own assessment. He has further admitted that he had told estimated age of the prosecutrix as 15-16 years on the basis of his surmise. The prosecutrix (PW2) herself was not able to state her date of birth.

- 14.** Head Constable K.K. Dwivedi (PW7) has stated that birth certificate (Ex.P8) of the prosecutrix was issued by the then Station House Officer Hemant Khare. As per Ex.P8, the date of birth of the prosecutrix is 18.10.1984. This witness has admitted that this entry had been made on the basis of Kotwari Register, but the concerned Kotwari Register has not been produced before the Trial Court nor the statement of Kotwar, who made entry in the said Kotwari Register regarding the date of birth of the prosecutrix, has been brought on record. There is no ossification test conducted by the prosecution.
- 15.** There is no clinching evidence on record to establish that at the time of incident, age of the prosecutrix was below 16 years. Since she was a consenting party and there is no evidence on record to show that the Appellant committed sexual intercourse with her enticing her that he will marry her and the evidence on record shows that her age was more than 16 years, the offence alleged under Section 376 of the Indian Penal Code is not made out against the Appellant. Therefore, he deserves to be acquitted of the charge framed under Section 376 of the Indian Penal Code.
- 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 from today in view 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