

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.32 of 2001

Seetal Ram, S/o Mohan Sai Chouhan, aged 29 years, R/o Gram Katangtarai, P.S. Patthalgaon, District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh

--- Respondent

For Appellant	:	Smt. Savita Tiwari, Advocate
For Respondent	:	Shri Neeraj Sharma, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

5.2.2018

1. This appeal is directed against the judgment dated 25.11.2000 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.232 of 1996 convicting and sentencing the Appellant as under:

Conviction	Sentence
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500/- with default stipulation
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500 with default stipulation

2. Case of the prosecution, in brief, is that on 28.4.1996, Nohar Sai (PW1) and Pirobai (PW6), parents of a minor girl, i.e., the prosecutrix (PW9), had gone to the house of their relative (Samdhi). The prosecutrix (PW9) was alone at her house. Her parents returned home at about 2:00 a.m. At that time, they did not find the prosecutrix at home. On being searched, Larang Sai (not

examined by the prosecution) told them that the Applicant took the prosecutrix towards Raigarh by a bus. First Information Report (Ex.P1) was lodged by Nohar Sai (PW1). The prosecutrix was recovered from the possession of the Applicant vide Ex.P13. It is alleged that when the prosecutrix was alone at her house, the Applicant, threatening her of life, took her out of her house by dragging. He took her to Patthalgaon and committed rape with her there in a room. Thereafter, he took her to Raigarh. Thereafter, he took her to his house at his village. He kept her in his house and kept the door closed from outside. He also kept on committing rape with her at his house. He also kept on threatening her of life on her disclosing the matter to anyone. The prosecutrix was medically examined by Dr. A. Minj (PW2). Her report is Ex.P5 in which she found the prosecutrix to be habitual to sexual intercourse. The Appellant was examined by Dr. P. Suthar (PW3). His report is Ex.P6 in which he found the Appellant to be capable of committing sexual intercourse. Ossification test of the prosecutrix was conducted by Dr. M.D. Joshi (PW4). His report is Ex.P7 in which he opined that the prosecutrix was aged about 17-19 years. 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 and 376 of the Indian Penal Code. Charges were framed against him under Sections 363, 366 and 376 of the Indian Penal Code.

3. To bring home the offence against the Appellant, the prosecution examined as many as 12 witnesses. Statement of the Appellant under Section 313 of the Code of Criminal Procedure was

recorded in which he denied the guilt and pleaded innocence. No witness has been examined in his defence.

4. 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 there was a love affair between the prosecutrix and the Appellant. The prosecutrix left her house at her own will. As per the ossification test report, her age was about 19 years. There is nothing on record to show that her age was below 18 years. Since she was a consenting party and she had gone out of her house at her own will, no case is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State supported the impugned judgment. He submitted that the prosecutrix has stated in her Court statement regarding forcible commission of rape with her by the Applicant, therefore, in this circumstance, her age is immaterial.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. I shall first discuss about the age of the prosecutrix.
9. There is no documentary evidence available in this case regarding birth of the prosecutrix. Nohar Sai (PW1), father of the prosecutrix and Pirobai (PW6), mother of the prosecutrix have not been able to state the actual age of the prosecutrix nor her date of birth. The prosecutrix herself has been unable to state her date of birth. On

the date of examination before the Court, her apparent age as recorded by the Court below is 18 years.

10. Dr. M.D.Joshi (PW4) has stated that on ossification test (Ex.P7) of the prosecutrix he found that her age was between 17 to 19 years.
11. From the above, it is established that the prosecutrix, on the date of incident, was not below the age of 18 years.
12. Regarding the incident, Nohar Sai (PW1), father of th prosecutrix has stated that he had gone out of the village. After 2 months, he returned to his village. His wife told him that a quarrel had taken place between the Appellant and the prosecutrix. The prosecutrix had lodged a report in the police station and thereafter she had run away. This witness has categorically stated that he had not lodged any report in police station against the Appellant regarding taking away of his daughter (prosecutrix) by the Appellant. This witness has been declared hostile.
13. Pirobai (PW6), mother of the prosecutrix has also stated that she had gone out to other village. Her son-in-law told her that the prosecutrix had run away. After 4-5 days of her running away, the prosecutrix had returned home along with the Appellant. In her cross-examination, this witness has stated that the prosecutrix had run away from home at her own will.
14. Jairam (PW5), brother-in-law of the prosecutrix has not supported the above statement of Pirobai (PW6) and has stated that he came to know from a woman of the village that the prosecutrix had run away from her house.

- 15.** Jogiram (PW10) and Sadhram (PW11) have stated that at about 10:00-11:00 p.m., they were participating in a *Keertan* (Recital). At that time, a noise came out from the house of Shankar. They went to the house of Shankar. There they saw that the Appellant and the prosecutrix were present inside the house of Shankar. In their cross-examination, both of them have stated that in the same night, the Appellant and the prosecutrix had run away from the village.
- 16.** The prosecutrix (PW9) has stated that she was alone at home in the night. At about 12:00 O'clock in the night, the Appellant came inside her house and dragging her out took her to Patthalgaon. He kept her there in a room of his friend and committed forcible sexual intercourse with her there. He thereafter threatened her of life on her not coming to Raigarh and thereby he took her to Raigarh in a bus. They stayed there in a hotel. Later on, they returned their village by a bus. In her cross-examination, in paragraph 6, she has admitted that her house is situated in the mid of the village and 10-15 houses are situated nearby her house. In paragraph 7, she has further stated that the Appellant came inside her house at about 12:00 O'clock in the night and dragging her out, he took her to Patthalgaon. It took 1 hour for them to reach to Patthalgaon. She has stated that she shouted in the house while taking out by the Appellant, she also shouted on the way while going to Patthalgaon. She has further stated that on the way, Jogiram (PW10) and Sadhram (PW11) had met them, but she did not tell them anything. In paragraph 9, she has stated that 2-3 friends of the Appellant were also present in the room of the house where the Appellant had kept her at Patthalgaon. But, these persons have also not

been examined by the prosecution. In paragraph 10, she has further stated that she and the Appellant sat at the bus-stand of Patthalgaon for about ½ hour. On reaching the bus, first she entered the bus and thereafter the Appellant entered the bus. Since no seat was vacant beside her seat, the Appellant sat on another seat in the bus. 40-50 other passengers were travelling in the said bus. She has further stated that she did not tell anything to any of the passengers travelling in the said bus. She also did not tell anything to anyone at Raigarh Bus-Stand and in the hotel also where they stayed in Raigarh.

17. Dr. A. Minj (PW2) has stated that she examined the prosecutrix on 3.5.1996. She gave her report (Ex.P5) in which she found that the prosecutrix was habitual to sexual intercourse. Dr. P. Suthar (PW3) has stated that he examined the Appellant and gave his report (Ex.P6) in which he found the Appellant to be capable of committing sexual intercourse.
18. Patwari Shaniyaram (PW8) has stated that he prepared spot-map (Ex.P3). Assistant Sub-Inspector B.D. Tripathi (PW12) is the witness who investigated the offence in question.
19. A minute examination of the evidence available on record makes it clear that Nohar Sai (PW1) and Pirobai (PW6), parents of the prosecutrix have not supported the case of the prosecution. Jairam (PW5), brother-in-law of the prosecutrix has also stated that the prosecutrix had run away along with the Appellant. Jogiram (PW10) and Sadhram (PW11) have also categorically stated that in the night they had seen the Appellant and the prosecutrix together in the house of Shankar. Though the prosecutrix has stated that

the Appellant had taken her out of her house in the night at about 12:00 O'clock by dragging her out and had taken her to Patthalgaon Bus-Stand. He committed forcible sexual intercourse with her in a house situated at Patthalgaon. Thereafter, he took her to Raigarh. They stayed there together in a hotel. Then again, by bus, they came back to Patthalgaon and thereafter to their village. If the Appellant had taken the prosecutrix away from her house forcibly and committed sexual intercourse with her against her will, she had ample opportunity to disclose about the incident to the nearby people met them on the way, in the bus, at the bus-stand etc. She also did not disclose anything about the incident to Jogiram (PW10) and Sadhram (PW11), who met them on the way.

20. From the above, it is established that the prosecutrix was a consenting party. It is also established that on the date of incident, her age was not below 18 years. She had gone out of her house along with the Appellant at her own will. Thus, no case is made out against the Appellant.
21. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
22. 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