

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 367 of 2014**

- Chhagan Das S/o Bhakkudas Manikpuri, Aged About 20 Years, R/o Village Mohbhaththa, P.S. Saja, Civil and Revenue District Bemetara C.G., Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh Through The Police Station, Saja, Civil and Revenue District Bemetara C.G., Chhattisgarh

-----Respondent

For Appellant : Shri R.K. Pali and Shri Amit Kumar Sahu, Advocates.
 For Respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****14/09/2018**

1. This appeal has been preferred against judgment dated 31-03-2014 passed in S.T. No.33/2013 by the Additional Sessions Judge, Bemetara, Distt. Bemetara, C.G. convicting the appellant under Section 363, 366 and 376 of the IPC and sentencing him with R.I. for 3 years, R.I. for 5 years and R.I. for 7 years along with fine Rs.500/-, Rs.1000/- and Rs.2500/- for each of the offence respectively with default stipulation and all the jail sentences are directed to be run concurrently.
2. The prosecution case, in brief, is that the minor prosecutrix aged about 13 years was allured by the appellant with false promise to marry her and he established physical relation with her on number of occasions which amounts to offence of rape. The appellant

abducted the minor prosecutrix on intervening night of 20-21 of November, 2012 and took her to Bilaspur and then to Delhi where by keeping the prosecutrix with him, he had physical relation with the minor prosecutrix on number of occasions again. Father of the prosecutrix Triveni Prasad Gupta (PW-5) lodged the FIR (Ex.-P/10) naming the appellant as abductor. The prosecutrix was then recovered from the custody of this appellant on 17-01-2013 and then handed over in custody of her father. Subsequent to the statement given by the prosecutrix, offence of rape was also added in the case under investigation. After completion of the investigation, charge sheet was filed before the concerned Court. The appellant was charged the with offence under Section 363, 366, and 376 of the IPC. The appellant denied the charges and prayed for trial.

3. After completion of the prosecution evidence, the appellant was examined under Section 313 of the CrPC, in which he has denied all the incriminating evidence produced against him, pleaded innocence and false implication. No witness was examined in defence. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
4. It is submitted by learned counsel for the appellant, that the appellant has been convicted in this case without there being reliable evidence of prosecution beyond reasonable doubt. The statements given by the witnesses are full of contradictions and omissions, because of which, they cannot be called trustworthy and such evidence cannot form the basis of conviction against the appellant. The appellant had been entitled for benefit of doubt. It is prayed, in alternative, that in case this Court is not inclined to set

aside the impugned judgment, at least the sentence imposed upon the appellant may be relaxed and reduced, as it is too harsh for him and he has already undergone a period of jail sentence for more than 5 years and 9 months. Hence, it is prayed that the appeal may be allowed.

5. Per contra, learned counsel for the State opposing the appellant's submission, submits that the prosecution has proved its case beyond reasonable doubt. Quality of the evidence of witnesses cannot be questioned, as all the witnesses have clearly supported the prosecution case. Hence, it is prayed that the appeal may be dismissed.
6. Heard learned counsel for the parties and perused the record of the trial Court.
7. The question for consideration in this appeal is whether the prosecution has proved its case beyond reasonable doubt and the order of conviction passed by the trial Court is supported with reliable evidence?
8. Deposition of the witnesses is perused and scrutinized for the purpose of considering the question raised in this appeal. The Prosecutrix (PW-1) has given statement that the appellant expressed that he love her and then started sending letters to her. Subsequent to that, the appellant by force started to take her on dates by putting her under threat. She has stated that the appellant then took her with him to Delhi where he kept her in confinement in a room and also used to rape her on number of occasions forcefully. She has stated that on finding an opportunity she made a call from

the mobile phone of the appellant to her father and then she was recovered from the custody of this appellant by the police. In her cross-examination, her statement has remained unrebutted and on perusal of her whole statement in cross-examination, there does not appear to be any statement to contradict, vary or modify the statement given by her in her examination-in-chief.

9. Triveni Prasad Gupta (PW-5) has stated that when the prosecutrix, his daughter went missing, on enquiry he found that the appellant is also missing, hence he lodged the FIR (Ex.-P/10) suspecting that the appellant had abducted the minor prosecutrix. He has further stated that he received phone call from the prosecutrix who informed him that she is in Delhi. Thereafter, with the help of the police the prosecutrix was recovered from the custody of the appellant. In cross-examination his statement has remained unrebutted and there is no such statement to find that the statement given by him in his examination-in-chief is contradicted. Geetabai (PW-6), is mother of the prosecutrix who has supported the statement of Triveni Prasad Gupta (PW-5). The Statement given by the prosecutrix (PW-1) finds support from the statement of Doctor Kunti Thakur (PW-10) who examined the prosecutrix and vide her report Ex.-P/14 she found that she was habitual to sexual intercourse and that the age of the prosecutrix was 14 years.
10. Regarding age of the prosecutrix, the Prosecutrix (PW-1) herself stated that her date of birth is 18-12-1999. In cross-examination her statement has remained unrebutted, though she has admitted that she is not in possession of any document certifying her date of birth,

but this itself cannot be made a basis to hold that her statement about her date of birth is false and unreliable because a person is supposed to know about his/her date of birth.

11. Triveni Prasad Gupta (PW-5) has also clearly stated that the date of birth of the prosecutrix is 18-12-1999 and he has kept the date of birth of the prosecutrix recorded in diary. As he has not been able to produce the diary, it does not make a ground that his memory cannot be relied. Similar statement has been given by Geetabai (PW-6) and it appears to be reliable evidence.
12. Baldau Singh Patel (PW-16) is Head Master of Middle School Kodava who has given statement on the basis of school admission register that the date of birth of the prosecutrix is 18-12-1999. On perusal of the statement given by him in cross-examination, it appears that his statement given in his examination-in-chief has remained unrebutted and it cannot be disbelieved.
13. Proving the defence that the prosecutrix had been major and above 18 years of age on the date of the incident was the burden on the appellant, regarding which, no evidence has been produced by the defence. Hence, the evidence produced by the prosecution which is examined and considered to be sufficient for proof of the age of the prosecutrix. Hence, it appears that the age of the prosecutrix on the date of the incident was nearly about 14 years.
14. Hence, after due consideration on each and every material present on record of the trial Court, it appears that the prosecution has proved its case beyond reasonable doubt and no error has been found in the order of conviction passed by the trial Court.

15. Considered on the submission made by learned counsel for the appellant about prayer for reduction of the sentence in this case. The sentence imposed upon the appellant is of 7 years R.I. for offence under Section 376 of the IPC, which is minimum sentence to be imposed for such offence. Hence, this sentence of imprisonment cannot be reduced, whereas, the sentence of fine can be reduced which appears to be exorbitant as the appellant did not have any source of income at the time when he was arrested in this case. Hence, after due consideration, the appeal is allowed in part. Conviction against the appellant and sentence of imprisonment passed against him are upheld. Similarly fine amount imposed against the appellant for offence under Section 363, 366 of the IPC are also upheld, but, the fine amount imposed upon him for the offence under Section 376 of the IPC is modified to Rs.2000/-, in default of which the appellant shall be required to undergo further R.I. for 4 months.
16. The appeal disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge