

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 608 of 2013**

1. Samaliya Bai W/o Phuleshwer Aged About 52 Years
2. Meena Singh W/o Umendra Singh Aged About 25 Years
Both R/o Village Gopal Pur, P.S. Jainagar, Distt. (Rev.) Surajpur,
Distt. (Civil) Surguja C.G.
3. Sukhsagar S/o Anand Singh, Aged About 27 Years R/o Village
Jabga, P.S. Dharamjaigarh, Distt. (Civil And Rev.) Raigarh C.G.

---- Appellants**Versus**

State Of Chhattisgarh Through Distt. Magistrate Surajpur, Distt.
(Rev.) - Surajpur, Distt. (Civil) Surguja C.G.

----Respondents

For Appellants	:	Mr. Yogesh Pandey, Advocate
For State	:	Mr. Vinod Tekam, Panel Layer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/01/2018**

1. The appellants No.1 & 2 in the instant case stands convicted for the offence under Sections 363, 366 & 367 of I.P.C. The appellant No.3 stands convicted for the offence under Sections 376 & 366 of I.P.C. The appellants No. 1 & 2 have been sentenced to undergo simple imprisonment for 1 year and fine of Rs.100/-, simple imprisonment for 2 years and fine of Rs.100/-, and simple imprisonment for 2 years and fine of Rs.100/- each respectively with defaults stipulated. The appellant No.3 has been sentenced to undergo simple imprisonment for 7 years and fine of Rs.100/- and simple imprisonment for 1 year and fine of Rs.100/- respectively with defaults stipulated.
2. The brief facts of the case is that the prosecutrix in the instant case PW-2 resident of village Gopalpur, P.S. Jainagar, District Surajpur is said to have been influenced by the appellant No.2 and has taken the prosecutrix knowing well that she was a minor to Surajpur, where

she is said have handed the prosecutrix a minor girl to the appellant No.3 Sukhsagar, who in turn is said to have taken the prosecutrix to some remote area and performed marriage and is said to have forcefully kept her in confinement for about 10 days, during which period he is said to have ravished the prosecutrix. It was also the case of the prosecution that the appellant No.3 Sukhsagar had paid an amount of Rs.6000/- to the appellant No.2 for providing the prosecutrix to him.

3. It was also the case of the prosecution that the prosecutrix somehow after about 10 days time could escape from the clutches of the appellant No.3 and immediately came and reported the matter to her father and thereafter an F.I.R. was lodged on 28.11.2011.
4. Subsequently, the matter was put to the trial before the Additional Sessions Judge, Surajpur, where the matter was registered as Sessions Trial No. 6/2012. The prosecution has examined as many as 7 witnesses to prove the charges leveled against the accused persons in defence there was no witness examined and the trial Court vide the impugned judgment dated 17.05.2013 found the appellants No. 1 & 2 guilty of the offence punishable under Sections 363, 366 & 367 and at the same time found the appellant No.3 guilty of the offence under Sections 376 & 366 and awarded the sentence as has been reflected in paragraph No.1 of the present judgment. It is the contention of the counsel for the appellants that the prosecutrix in the instant case was aged almost about 16 years at the time of evidence and there was no conclusive prove of the date of birth of the prosecutrix and therefore it has to be presumed that she was not a minor at the date of incident.

5. It was further contended by the appellants that the plain reading of the evidence of the prosecutrix would show that she was a consenting party as she had been travelling with the appellants to different places with no sign of any protest or objection whatsoever. It was further contended by the appellants that the prosecutrix in her possession had a mobile with which she could have easily sought for help by calling upon her relative, which she did not do. Likewise, it was also contended that the prosecutrix was in the company of the appellants for about 10-12 days, during which she had ample opportunity to escape from the clutches, which again she did not do. All these goes to show that the prosecutrix was a consenting party and thus prayed for the setting aside of the judgment of conviction.
6. The State counsel on the contrary opposing the appeal submits that it is a case where there is an ample evidence to show that prosecutrix was forcefully given by the appellant No.2 to the appellant No.3 and that the appellant No.3 also forcefully had taken her to Dharamjaigarh, where he had kept her in confinement for about 10 days and during which he is said to have sexually ravished the prosecutrix. It was also the contention of the State counsel that the prosecutrix has fully supported the case of the prosecution and that the age of the prosecutrix also stands established to be less than 16 years on the date of incident from the school transfer certificate (Exhibit P/10), which has been proved by the Headmaster of the concerned school, who has been examined as PW-6 Chhotelal. And accordingly from all these facts, the State counsel prayed for the rejection of the appeal.

7. Having heard the contentions and submissions put forth on either side and on perusal of record, what is primarily to be seen is the role played by each of the appellants in the instant case. So far as appellant No.1 Samaliya Bai is concerned, it is reflected that except for a statement made by the prosecutrix that when the appellant No.2 Meena Singh had handed over the prosecutrix to appellant No.3 Sukhsagar, he was accompanied by the appellant No.1 Samaliya Bai. Except for this statement, there is no other allegation of any over tact played by the appellant No.1 or the appellant No.1 having played any role in either facilitating the appellant No.3 or in any manner influencing the prosecutrix or putting any force or pressure upon the prosecutrix for being in the custody of the appellant No.3. Apart from the statement of the prosecutrix, there is no other piece of evidence available against the appellant No.1.
8. Given the facts and circumstances of the case, this Court is of the opinion that the conviction of the appellant No.1 for the offence punishable under Sections 363, 366 & 367 of I.P.C. does not seem to be either justified in any manner as there is no evidence whatsoever against the appellant No.1 establishing these offence as the ingredients required to make out the offence under Sections 363, 366 & 367 of the I.P.C. are missing. The conviction of the appellant No.1 thus, for these offences stands set-aside and she stands acquitted from all the charges leveled against her.
9. So far as the appellant No.2 is concerned, there is a specific averments made by the prosecutrix in as much as the appellant No.2 Meena Singh having taken the prosecutrix without the knowledge, consent and information of the parents of the prosecutrix to Surajpur

and where she had given the custody of the prosecutrix to the appellant No.3 Sukhsagar. The prosecutrix (PW-2) has specifically narrated the role played by the appellant No.2. From the evidence of the prosecutrix (PW-2) it also reveals that she was not known to the appellant No.3 before she was introduced to the appellant No.3 by the appellant No.2 Meena Singh. Thus, there does not seem to be any sought of a relationship between the prosecutrix and the appellant No.3 before the date of incident i.e. on 15.11.2011.

10. It is further established that Meena Singh was a resident of the same village where the prosecutrix belonged and the prosecutrix used to go to the house of the appellant No.2 for domestic work and subsequently, the appellant No.2 knowing fully well that the prosecutrix was a minor, took her to Surajpur and where she has given the prosecutrix to the appellant No.3 Sukhsagar. It is also specifically stated by the prosecutrix that while handing over the custody of the prosecutrix to the appellant No.3, the appellant No.2 had charged Rs.6000/- from the appellant No.3, which he had paid in the presence of the prosecutrix. This statement of the prosecutrix has not been rebutted in any manner, nor had it been controverted in the cross-examination. Thus, there is nothing to disbelieve the statement of the prosecutrix in this regard.
11. Given the said facts and circumstances and statement of the prosecutrix, which stood uncontroverted, the finding of guilt by the trial Court of the appellant No.2 seems to be proper and legal and does not warrant interference and the conviction of the appellant No.2 thus stands affirmed and the appeal so far as Meena Singh is concerned stands rejected.

12. So far as the appellant No.3 is concerned, it is a case where the appellant No.3 and the prosecutrix were not known to each other, it appears from the evidence that the appellant No.3 had paid money to the appellant No.2 for getting the custody and possession of the prosecutrix, which stands established from the statement of the prosecutrix, which has been further substantiated by the statement of the father of the prosecutrix (PW-1), who was informed about the incident immediately after the prosecutrix escaped from the clutches of the appellant No.3. The fact that she was subjected to sexual intercourse during the said period also stands proved from the medical evidence i.e. the statement of Doctor (PW-4), who had examined the prosecutrix immediately after she had lodged the F.I.R. on 28.11.2011.
13. Further, as regards the date of birth, there is Ex.P/10, which has been produced by the prosecution, which is a school transfer certificate, which has been marked as Exhibit P/10. In the said certificate, the date of birth of the prosecutrix was recorded as 29.06.1996. Accordingly, on the date of incident i.e. on 15.11.2011, the age of the prosecutrix approximately would be 15 years and 4 months, which proves that she was less than 16 years on the date of incident. The said school certificate has been proved by PW-6 Chhotelal, the Headmaster of the school, where the prosecutrix had studied. There is nothing which has been brought by the defence to establish that the prosecutrix was not a minor or that she was aged more than 16 years on the date of incident. Unless otherwise proved the date of birth as has been reflected in the school transfer certificate has to be accepted to be true and correct. From the cross-

examination of the prosecutrix, there does not appear to be much which could be extracted by the defence with which the statement of the prosecutrix becomes either doubtful or hard to believe.

14. The fact that the prosecutrix and the appellant No.3 were not known to each other prior to 15.11.2011 further strengthens the case of the prosecution that she was not a consenting party to the incident. Further, in her statement the prosecutrix has categorically stated that she was forcefully taken away by the appellant No.3 on 15.11.2011 after paying Rs.6000/- to the appellant No.2 Meena Singh and took her to Dharamjaigarh, where he had kept her at a room for about 10 days, during which she was subjected to sexual intercourse. Since, there is not much evidence with which the statement of the prosecutrix could be doubted, this Court again finds the conviction of the appellant No.3 Sukhsagar for the offence punishable under Sections 376 & 366 of I.P.C. to be proper and legal, and the conviction or the sentence does not warrant interference.
15. Thus, for the aforesaid reasons, the appeal is allowed in part to the extent that the appellant No.1 stands acquitted of all the charges and so far as conviction of the appellants No. 2 & 3 is concerned, the same is affirmed and the appeal stands rejected so far as appellants No.2 & 3 is concerned.

Sd/-
(P. Sam Koshy)
Judge