

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 155 of 2012**

Harish Dhruv S/o Ramcharan Dhruv, Aged about 23 years R/o Gram Achhota,
P.S Arjuni, Distt. Dhamtari (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through PS Arjuni, District Dhamtari (C.G.)

---- Respondent

For Appellant : Mr. Trivikram on behalf of Mr Maneesh Sharma, Advocate
For Respondent: Mr. Shubham Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****15/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 23/04/2011 passed in Sessions Trial No. 06/2011 by the Sessions Judge, Dhamtari whereby the Appellant has been convicted under Sections 376 & 506 (B) of the IPC and sentenced to undergo RI for 8 with fine of Rs. 5000/- and RI for 2 years with fine of Rs. 1000, respectively, with default stipulations.
2. Facts of the case are that at the relevant time the age of the Prosecutrix was about 15 years. On 28/02/2011, the Prosecutrix (PW2) lodged a report alleging therein that on 26/01/2011 at about 7:00 pm, when she was going towards river to attend the call of nature, the Appellant caught hold her. He took her to nearby courtyard and committed forcible sexual intercourse with her twice. The Appellant threatened her not to disclose this fact. She told the entire incident to her mother and grand maternal mother. Thereafter, the matter was reported. The Prosecutrix was

medically examined by Dr. Smt. M Wankhede (PW4). Her report is Ex.P-9. Statement of witnesses as well as the Prosecutrix were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 7 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that statement of the Prosecutrix is not reliable. From the statement of the Prosecutrix, it seems that she was the consenting party. There is nothing on record on the basis of which it can be said that at the time of incident, the age of the Prosecutrix was below 18 years, therefore, the trial Court has wrongly convicted the Appellant.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that from the record it is well established that at the time of incident, the age of the Prosecutrix was below 18 years. Her statement is duly reliable, therefore, the trial Court has rightly convicted the Appellant.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In her Court statement, the Prosecutrix (PW2) has deposed that on

26/01/2011 at about 6:30 pm, when she was going towards river for attending call of nature, the Appellant came from back side and caught hold her mouth. He had taken her to the field of one Dwarika and after removing her clothes committed sexual intercourse with her. He also threatened her not to disclose the matter. She further deposed that after returning to home, she told the incident to her mother. Thereafter, she along with her mother had gone to the house of the Appellant. Her mother asked about the incident from Appellant on which the Appellant denied about the incident. On the next day, a village meeting was called, but the meeting was not conducted. Thereafter, FIR (Ex.P.-2) has been lodged. In para 8 and 9 of her cross-examination, some suggestions have been given by the counsel for the Defence. According to these suggestions, the Appellant was previous present in the field and thereafter the Prosecutrix reached there, and after removing her clothes, she lay down on the field and the Appellant committed sexual intercourse with her for about ½ hours. Thus, it is clear that the Appellant had committed alleged act with the prosecutrix. The Prosecutrix was medically examined by Dr. Smt. M. Wankhede (PW4). As per her opinion, the Prosecutrix was habitual to perform intercourse and no definite opinion was given of recent intercourse. Neera Bai (PW5), mother of the Prosecutrix has supported the statement of the Prosecutrix and stated that on the date of incident at about 9:00 pm, the Prosecutrix told her about the incident then she told to her mother and thereafter a village meeting was proposed to be called, but no one came. On the next day, a report was made. R.S. Mishra (PW6) and Smt. Gayatri Sinha (PW7) are the witnesses who investigated the matter.

8. With regard to the argument advanced by the counsel for the Appellant that the Prosecutrix was the consenting party, I have gone through the entire evidence of the Prosecutrix. Though suggestions were made before her in this regard, she denied the suggestions. The Prosecutrix during her cross-examination remained firm regarding the incident and has categorically stated that the alleged act was committed with her by the Appellant forcibly. In these circumstances, I do not find any substance in the argument advanced by the counsel for the Appellant that the Prosecutrix was the consenting party.
9. With regard to the age of the Prosecutrix, there is no documentary evidence available on record. However, the Prosecutrix and her mother both have stated that at the relevant time, the Prosecutrix was aged about 14-15 years. Neera Bai (PW5), mother of the Prosecutrix has stated that the Prosecutrix was admitted in school, but there is no document in this regard. As stated by her, the Prosecutrix has studied 8th class, yet no document has been seized by the prosecution. Dr. Smt. M. Wankhede (PW4) who had medically examined the Prosecutrix, had advised ossification test, but this was not done by the prosecution, therefore, on the basis of evidence available on record, it is not established that the Prosecutrix was below 18 years, but as discussed above, it is established that forcible intercourse was performed. Therefore, there is no meaning of consent of the Prosecutrix. Thus, the finding of the trial Court is in accordance with law and the evidence available on record and the said Court has rightly convicted the Appellant.
10. Consequently, I do not find any merit in this appeal and the same is

dismissed.

11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge

Rahul