

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1356 of 2000**

Gulab S/o Mahajan, aged about 23 years, R/o Village Gujra, Police Station, Balod, District Durg (C.G.).

----Appellant

Versus

State of Chhattisgarh through Police Station Gurur, Distt. Durg (C.G.)

---- Respondent

AND**Criminal Appeal No. 1751 of 2000**

Keshav Ram S/o Gwalram, aged about 25 years R/o Village Ranakhujji, P.S. Deori, District Durg (M.P.) (Now Chhattisgarh).

----Appellant

Versus

State of Chhattisgarh through Police Station Gurur, Distt. Durg (M.P.) (Now Chhattisgarh)

---- Respondent

For Appellant in CRA 1356/2000:	Mr. Basant Dewangan, Advocate
For Appellant in CRA 1751/2000:	Ms. Indira Tripathi, Advocate
For Respondent :	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****09/12/2019**

1. Since both the appeals arise out same impugned judgment dated 15/04/2000 passed in Sessions Trial No. 121/1999, therefore, these appeals are being decided by this common judgment.
2. These appeals have been preferred under Section 374 (2) of Cr.P.C against the judgment dated 15/04/2000 passed in Sessions Trial No. 121/1999 by the Additional Sessions Judge, Balod, Distt. Durg whereby Appellant Gulab (in CRA No. 1345/2000) has been convicted under Sections 363, 366 & 376 (1) of the IPC and sentenced to undergo RI for

7 years, RI for 7 years and RI for 7 years, respectively & Appellant Keshav Ram (in CRA No. 1751/2000) has been convicted under Section 368 of the IPC and sentenced to undergo RI for 7 years. All the sentences were directed to run concurrently.

3. Facts of the case are that the age of the Prosecutrix (PW1) was about 16 years 9 months at the relevant time. According to the mark-sheet Ex.P-1, the date of birth of the Prosecutrix is 26/01/1982. The date of incident is 14/10/1998. As per prosecution case at the relevant time, the Prosecutrix was studying in school at village Neepani. Appellant Gulab was studying in school at village Peeparchadi and was residing in boys hostel. It is further case of the Prosecution that Appellant Gulab allured the Prosecutrix on the pretext of marriage and had taken her to village Peeparchadi. Thereafter, he took her to Village Rajhara and on the next day he took her to Village Hawretola in the house of his friend. Appellant Gulab, thereafter, took her to the house of Keshavram situated at village Ranakhujji. On the above days, Appellant Gulab committed sexual intercourse with her. Since the Prosecutrix did not return from her school, therefore, her father lodged a missing report. During course of inquiry, the Prosecutrix was recovered from the house of Appellant Keshav Ram. Recovery memo Ex.P-14 was prepared. Statement of the Prosecutrix under Section 161 of the Cr.P.C was recorded. With regard to the age of the Prosecutrix relevant document has been seized. Statement of other witnesses were also recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 13 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellants under Section

313 of the Cr.P.C were recorded, wherein they have pleaded their innocence and false implication in the matter.

4. After trial, the trial Court has convicted and sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submit that the Appellants have been wrongly convicted by the trial Court without there being any reliable evidence available on record. They further submit that from the statement of the Prosecutrix it is apparent that she was the consenting party in the alleged act. She herself left her house on her own will and visited various places with Appellant Gulab. The age of the Prosecutrix has not been duly proved by the prosecution. Though as per the entry in the mark-sheet, the age of the Prosecutrix was below 18 years, no one has been examined who registered the date of birth of the Prosecutrix in the mark-sheet. Apart from this, Kotwar register and other birth certificate have not been produced by the Prosecution. Even her father was not able to tell the actual date of birth of the Prosecutrix. They further submit that Madan (PW2) father of the Prosecutrix in para 8 of his cross-examination has deposed that his elder daughter is aged about 20 years and the Prosecutrix is 1 ½ years younger from his elder daughter. Thus, from the above admission, it is apparent that the age of the Prosecutrix was above 18 years. They further submit that since the Prosecutrix was the consenting party, therefore, no offence is proved against any of the Appellants.
6. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. In her Court statement, the Prosecutrix (PW1) has deposed that on the date of incident when she was going to school, Appellant Gulab came there on his bi-cycle and asked her to go with him. She refused to go with him. Then, Appellant Gulab forcibly took her to village Rajhara. On the next day, he took her to Village Hawretola and from there he took her to village Ranakhujji in the house of his friend i.e. Appellant Keshav. Appellant Gulab committed rape with her. During cross-examination, this witness has admitted that she known Appellant Gulab previously. Though she denied the fact that she was having love affair with Appellant Gulab, she admitted the fact letters Ex.D-3 & Ex.D-4 were written by her. According to the Prosecutrix, her friend namely Premin Bai had forcibly told her to write those letters, but Premin Bai has not been examined in this regard. This witness has admitted that Ex.D-6 is a photo of her and Appellant Gulab. In para 20, this witness has further admitted that before 2 months of the incident, she was having love relation with Appellant Gulab. She further deposed that Appellant Gulab had taken her to the house of his friend on his bi-cycle and at that time, she was able to flee away from the spot, but she did not do so. Thereafter, they went to Nawagaon for catching the bus and she firstly entered into the bus followed by Appellant Gulab. There also, she did not tell that she is being forcibly abducted. After reaching to Dallirajhara, they had gone to watch a movie.
9. From the above admission made by the Prosecutrix, it is clear that she was having love affair with Appellant Gulab and she had written love

letters to him. She had also clicked a photograph with Appellant Gulab. Though according to the Prosecutrix, the Appellant had forcibly taken her with him, from the above admission made by her, it is clear that she was having ample opportunities to flee away from the spot and make complaint, however, she did not do so. On the contrary, she had gone to watch movie with Appellant Gulab. Thus, it is well established that the Prosecutrix was the consenting party in the alleged act committed by Appellant Gulab.

10. With regard to age of the Prosecutrix, in her Court statement the Prosecutrix has categorically stated that she does not know her date of birth and she had told her date of birth seeing mark-sheet Ex.P-1. She had told her date of birth as 26/01/19982. Madan (PW2) father of the Prosecutrix has also stated that the date of birth of the Prosecutrix is 26/01/1982, but in para 8 of his cross-examination, he deposed that her elder daughter Sunaina who is 20 years of age and the Prosecutrix is 1 ½ years younger from her. He further deposed that he does not know the date of birth of any of his children. He further deposed that the Prosecutrix took birth at the village of her Mama and he came to know the date of birth of the Prosecutrix from there and register the same in Kotwari register, but no Kotwari register has been produced by the Prosecution. This witness has further admitted that the date of birth of the Prosecutrix has been registered in the mark-sheet as told by him.
11. Mansalal (PW4) is a witness from whom Dakhil Kharij register has been seized vide Ex.P-9. This witness has deposed that the Prosecutrix has been admitted in the school at Class-9th. He does not know the fact that before this school where the Prosecutrix was studying. He further

admitted that the date of birth of the Prosecutrix registered in Dakhil Kharij register was made on the basis school TC of the Prosecutrix. But who admitted the Prosecutrix in this school and by whom the date of birth of the Prosecutrix has been registered, he does not know.

12. A scrutiny of the above evidence makes it clear that according to the entry of Dakhil Kharij register, the date of birth of the Prosecutrix is 26/01/1982, but this entry was made on the basis of mark-sheet of the Prosecutrix. Firstly where the Prosecutrix was admitted in school and who admitted her, there is no evidence in this regard. Both the Prosecutrix and her father are also not able to tell the actual date of birth of the Prosecutrix. Both have admitted that on the basis of mark-sheet, they had told the date of birth of the Prosecutrix. From the statement of Madan (PW2), it is clear that the date of birth of the Prosecutrix has been registered in Kotwari register, but no Kotwari register has been produced. According to this witness her elder daughter is 20 years of age and the Prosecutrix is 1 ½ years younger from her. It is well established that the Prosecutrix was above 18 years. Thus, from the evidence available on record, it is not proved beyond all reasonable doubt that the age of the Prosecutrix at the relevant time was below 18 years. Since the Prosecutrix was the consenting party and her age was below 18 years is not established, therefore, no offence is proved against any of the Appellants.
13. Accordingly, the Appeals are allowed. The impugned judgments are quashed and the Appellants are acquitted from the charges framed against them. It is reported that the Appellants are on bail. Their bail bonds be discharged.

14. 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