

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1166 of 2002**

Venkateshwar Kumar @ Banti S/o Budhram Sahu, aged about 23 years R/o Village Khadma, P.S. Chura, Distt. Raipur (C.G.).

----Appellant**Versus**

State of Chhattisgarh through P.S. Rajim, Distt. Raipur (C.G.).

---- Respondent

For Appellant	:	Mr. Devesh G. Kela, Advocate
For Respondent	:	Ms. Seema Dixit, PL for the State.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****04/12/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 27/09/2002 passed in Sessions Trial No. 57/2002 by the Sessions Judge, Raipur, whereby the Appellant has been convicted under Sections 363, 366 & 376 of the IPC and sentenced to undergo RI for 3 years and to pay fine of Rs. 2000/-, RI for 5 years and to pay fine of Rs. 2000/- and RI for 8 years and to pay fine of Rs. 2000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix (PW1) was about 16 years at the relevant time. It is alleged that the Appellant abducted the Prosecutrix from the lawful guardianship of her father Sant Kumar and uncle Lakhanlal on 25/11/2001 and committed raped upon her during the period of their stay from 25/11/2001 to 02/12/2001 at Rajnandgaon and Kurud. The Prosecutrix was recovered on 02/12/2001. Her statement was recorded under Section 161 of the Cr.P.C. She was medically

examined by Dr. D. Kudeshiya (PW5). Her report is Ex.P-27. Dakhil Kharij register of the Prosecutrix was also seized. According to entries of Dakhil Kharij register, the date of birth of the Prosecutrix has been recorded as 07/08/1986. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 6 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. In para 19 of the impugned judgment, the trial Court has arrived to the conclusion that the Prosecutrix was the consenting party instead thereof, the trial Court has convicted the Appellant on the basis of that the age of the Prosecutrix was below 16 years. It is further submitted that Kumari Meena (PW1) and Santkumar (PW2) both have not stated the actual date of birth of the Prosecutrix. Even, father of the Prosecutrix Sant Kumar (PW2) was not able to told that on what time, the Prosecutrix took birth after marriage. He further submits that the entries regarding date of birth made in Dakhil Kharij register (Ex.P-21) has been made only on the basis of transferred certificate, but in original Dakhil Kharij register on what basis entry has been made and by whom entry has been made is not established. Therefore, the entry in Dakhil Kharij register does not provide any help to

the case of the prosecution. He further submits that there is no clinching evidence available on record on the basis of which it can be said that at the relevant time, the Prosecutrix was below 18 years, therefore, the conviction of the Appellant is not sustainable.

5. 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.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. On perusal of the statement of the Prosecutrix (PW1), it appears that she was the consenting party and she visited various places with the Appellant, thus, the finding of the trial Court in this regard is in accordance with the evidence available on record.
8. With regard to the age of the Prosecutrix, only entries made in Dakhil Kharij register (Ex.P-21) is available, wherein the date of birth of the Prosecutrix has been mentioned as 07/8/1986. Teacher K.L. Kavar (PW6) has admitted the fact that he made the entries on the basis of transferred certificate only and the original Dakhil Kharij register wherein first time date of birth of the Prosecutrix was entered has not been produced by the Prosecutrix. Thus, it is not established that on what basis and by whom entries has been made. There is no Kotwari register in which the date of birth of the Prosecutrix has been made. In these condition, the entry of Dakhil Kharij register is not a conclusive proof to determine the age of the Prosecution. Santkumar (PW2) father of the Prosecutrix has stated that the age of the Prosecutrix was about 15 years, but he was not able to tell the date of birth of the Prosecutrix.

Even, he was not able to tell that after how many years of his marriage, the Prosecutrix took birth. This witness has further deposed that he performed marriage at the age of 12 – 13 years, but he was unable to tell that after how many years his *Gona* took place. The Prosecutrix herself was unable to tell her date of birth. She was also unable to tell that at what age she was admitted in school. To determine the age of the Prosecutrix no ossification test was performed.

9. From the above, it is clear that there is no clinching evidence available on record on the basis of which it can establish that at the relevant time, the age of the Prosecutrix was below 18 years. Since the Prosecutrix was the consenting party and she was below 18 years is not established, therefore, no offence is made out against the Appellant. Thus, the impugned judgment dated 27/09/2002 passed in Sessions Trial No. 57/2002 by the Sessions Judge, Raipur is quashed.
10. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. It is reported that the Appellant is on bail. His bail bond be discharged.
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