

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.119 of 2011

Purshottam, son of Shri Ram Lal Baiga, 20 years, resident of Lakhan Tola,
Police Station Janakpur, Tahsil Bharatpur, District Korea, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Korea, Chhattisgarh

--- Respondent

For Appellant	:	Shri Keshav Dewangan, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13.9.2019

1. The instant appeal has been preferred against the judgment dated 13.1.2011 passed by the 3rd Additional Sessions Judge (FTC), Manendragarh, District Korea in Sessions Trial No.51 of 2010, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 342 of the Indian Penal Code	Simple Imprisonment for 1 year and fine of Rs.200/- with default stipulation
Under Section 506 Part II of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that on the relevant date, age of the

prosecutrix (PW7) was about 14 years and 8 months. On 26.3.2010, she along with her schoolmate Kalawati went to the shop of the Appellant for purchase of sweets. When she was returning, the Appellant caught her and took her inside the shop and asked one Visheshwar to lock the shop from outside. Visheshwar, after locking the shop, took the key along with him. Thereafter, the Appellant threatened the prosecutrix and said her to remove her clothes and wear his clothes. At about 4:00 p.m., one Sunil Yadav opened the shop and thereafter the Appellant took the prosecutrix towards Village Bahrasi. He took her there in the house of one Smt. Kalawati where they stayed in the night. Thereafter, on the next day, when they were going in a bus to Village Chutki, Brijbhan and Rajbhan, who were searching for the prosecutrix, caught them and asked them to get down from the bus. Thereafter, the prosecutrix was handed over to her family members. First Information Report (Ex.P8A) was lodged by the prosecutrix on 27.3.2010. Offence was registered. During the course of investigation, vide Ex.P4, mark-sheet of the prosecutrix was recovered from her father in which her date of birth is mentioned as 2.7.1995. Statements of the prosecutrix as well as other witnesses were recorded. On completion of the investigation, a charge-sheet was filed. Charges were framed.

3. In support of its case, the prosecution examined as many as 10 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded false implication. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in the

first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submits that without there being any clinching evidence on record, the Trial Court has wrongly convicted the Appellant. From the admissions made by the prosecutrix as well as other witnesses, it is clear that the prosecutrix was a consenting party. She herself, at her own will, went along with the Appellant and visited various places along with him. It is further submitted that apart from the mark-sheet of the prosecutrix (Article A1) which was seized vide Ex.P4, no other documentary evidence is available on record with regard to her age. No Kotwari register or dakhil-kharij register has been produced by the prosecution. In their statements, mother and father of the prosecutrix and the prosecutrix herself have not stated anything regarding age of the prosecutrix. Therefore, age of the prosecutrix was below 18 years is also not established. Since she was a consenting party and she herself, at her own will, left her house, no offence is made out.
6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. I shall first examine the evidence available on record with regard to age of the prosecutrix (PW7). In her Court statement, she has not stated anything regarding her age or year of her birth. Her mother Sonkali (PW8) and father Sumer (PW9) have also not stated anything regarding date of birth or age of the prosecutrix. With regard to documentary evidence regarding date of birth of the

prosecutrix, only mark-sheet (Article A1) is available on record, according to which, date of birth of the prosecutrix is 2.7.1995. Father of the prosecutrix Sumer (PW9) has admitted the fact that at the time of admission of the prosecutrix in school in 1st standard, he had got her date of birth recorded, but the register in which entries were made at the time of admission in the school in 1st standard has not been produced by the prosecution nor has any Kotwari register been produced. There is no evidence on record to show that on which basis the entry of date of birth of the prosecutrix in her mark-sheet of 5th standard (Article A1) was made. From the above, it is clear that the prosecution has failed to prove that on the relevant date age of the prosecutrix was below 18 years.

9. With regard to the alleged incident, the prosecutrix (PW7), in her Court statement, has stated that at the time of incident, she went to the shop of the Appellant with Kalawati for purchasing sweets. At that time, Sunil came there and pushed her. Then the Appellant dragged her inside the shop and Sunil closed the door of the shop from outside and locked it. Thereafter, the Appellant and Sunil said her that if she shouts, they will assault her by a knife. Thereafter, the Appellant gave her his clothes and asked her to wear them. Thereafter, both Sunil and the Appellant took her towards the jungle. Thereafter, the Appellant took her to a house at Village Bahrasi. There they stayed in the night. Next day, she sat in a bus along with the Appellant. At that time, Rajbhan and Brijbhan met them in the bus and they said them to get down from the bus and they took her to her house. Thereafter, she lodged the FIR (Ex.P8A). In her cross-examination, in paragraph 12, she has admitted that had she come out in a salwar suit, there would have

been possibility of her recognition by the villagers and, therefore, she had worn pant and shirt. In paragraph 16 also, she has admitted that after reaching to the dam, she again wore her salwar suit and returned the pant and shirt to the Appellant. In paragraph 14 also, she has admitted that she had come out from the shop of the Appellant alone so that no villager could see her and the Appellant had come to her 15-20 minutes thereafter. In paragraph 19, she has also admitted that at the village where they had stayed, she herself had cooked food. In paragraph 29, she has further admitted that since she had gone away along with the Appellant, her parents were highly angry and, therefore, she lodged the FIR.

- 10.** Kalawati (PW1) has also admitted that there was a love relationship between the prosecutrix and the Appellant. At the time of incident, the prosecutrix herself had entered the shop of the Appellant and asking for closing the door of the shop from outside, she had asked to give the key thereafter to Visheshwar.
- 11.** Rajbhan (PW3) and Brijbhan (PW4) have also admitted that when the prosecutrix was found along with the Appellant in the bus, they tried to get her down from the bus, but she expressed her unwillingness to get down and she expressed that she wanted to go along with the Appellant. Then they forcibly got her down from the bus and they forcibly took her along with them to her house.
- 12.** Kalawati (PW5), wife of Jaikaran has also stated that the Appellant and the prosecutrix had come to her house at Village Bahrasi and stayed there in the night. At that time, the prosecutrix had told her that there was an invitation from her sister and since the time was of night, they wanted to stay at her house.

- 13.** On a minute examination of the above evidence, particularly, the admissions made by the prosecutrix (PW7) and the other witnesses, it is clear that there was a love relation between the prosecutrix and the Appellant and due to that the prosecutrix herself, at her own will, left her house and went away along with the Appellant. At that time, her age was below 18 years is not established. She was forcibly confined in the shop of the Appellant is also not established. She was given any threat by the Appellant is also not established. In these circumstances, no offence is made out against the Appellant.
- 14.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge