

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.354 of 2011**

Vipin Lakda, son of Vernet Lakda, aged about 20 years, occupation agriculture, resident of Village Navgai, Police Station Dumri, District Gumla, Jharkhand

---- Appellant

versus

State of Chhattisgarh through Police Station Kansabel, District Jashpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri J.K. Saxena, Advocate
For Respondent	:	Shri Amit Kumar Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

22.10.2019

1. The instant appeal has been preferred against the judgment dated 27.10.2009 passed by the Sessions Judge, Jashpur in Sessions Trial No.16 of 2009, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.100/- with default stipulation
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.100/- with default stipulation

2. Prosecution case, in brief, is that on the date of incident, age of the prosecutrix (PW1) was 17 years 7 months and 6 days. According to the prosecution, her date of birth is 12.3.1991. As per the

prosecution case, on 18.10.2008, the present Appellant deliberately caught the prosecutrix, took her away and committed forcible sexual intercourse with her at Chhatawardand. Acquitted accused Niroj Lakda helped the present Appellant by giving him food at Chhatawardand. Ruben Xess (PW2), father of the prosecutrix lodged First Information Report (Ex.P8). On completion of investigation, a charge-sheet was filed against accused persons Vipin Lakda and Niroj Lakda. Charges were framed against accused/Appellant Vipin Lakda under Sections 363, 366 and 376(1) of the Indian Penal Code and against accused (acquitted) Niroj Lakda charge was framed under Section 212 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt and pleaded false implication. No witness has been examined in their defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted accused Niroj Lakda of the charge framed against him, but convicted and sentenced accused/Appellant Vipin Lakda as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the Trial Court without there being evidence on record against him. From the statements of the prosecutrix and other prosecution witnesses, it is well established that the prosecutrix was a consenting party to the alleged act. From the evidence adduced by the prosecution, it is

not established that on the date of incident, age of the prosecutrix was below 18 years. Since she was a consenting party and her age is not proved to be below 18 years, no offence is made out against the Appellant.

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 (PW1). Both the prosecutrix (PW1) and her father Ruben Xess (PW2) have not stated anything about date of birth of the prosecutrix. During the course of investigation, one mark-sheet (Ex.P1) of the prosecutrix was seized vide Ex.P2. According to the entries of the mark-sheet (Ex.P1), date of birth of the prosecutrix is 12.3.1991. On what basis the said date of birth of the prosecutrix was recorded, there is no evidence available on record in this regard. Apart from the said mark-sheet, no other documentary evidence like dakhil-kharij register or kotwari register was produced by the prosecution.
9. Dr. Smt. K. Tirki (PW8), while examining the prosecutrix, advised for ossification test of the prosecutrix to determine her age, but the prosecution has not done so for the reasons best known to them. Considering the evidence available on record, it is not proved beyond reasonable doubt that on the relevant date, the prosecutrix was below 18 years of age. The Trial Court has also categorically arrived at the finding that it was not proved that age of the

prosecutrix was below 18 years on the date of incident and for this reason the Trial Court has acquitted the Appellant of the charge framed under Section 363 of the Indian Penal Code.

10. With regard to the alleged incident, though the prosecutrix (PW1), in her Court statement, has stated that at the time of incident, when she was returning with Sunita (PW3), the Appellant snatched her book from her hand and gave the book to Sunita. Thereafter, the Appellant saying this witness that he had purchased her asked her to accompany him and thereafter he took her along with him towards the jungle. It has been further stated by the prosecutrix that the Appellant kept her in the jungle for many days and thereafter he left her at the house of one woman Karmela. As stated by this witness, the Appellant committed forcible sexual intercourse with her in the jungle many times. During her cross-examination, she has admitted that rocks and stones were lying in the jungle, but even thereafter, she did not suffer any abrasion over any part of her body. In paragraphs 27 and 30 of her cross-examination, this witness has also admitted that she and the Appellant had also taken bath together in the jungle and had also slept together in the jungle for 2 days. She took bath with the woman Karmela between the dates 18th and 25th.

11. Sunita (PW3), who was in the company of the prosecutrix at the time of incident, has deposed that the Appellant had come to the prosecutrix and asking her to accompany him had dragged her away. This witness has also admitted that at that time the prosecutrix did not shout and went away along with the Appellant and while going away the prosecutrix also asked this witness not to tell about this to anyone.

12. Dr. Smt. K. Tirki (PW8), who examined the prosecutrix, has also admitted that as per her opinion the prosecutrix was habitual to sexual intercourse and there was no injury present over her back, buttocks or any other part of her body.
13. On a minute examination of the evidence available on record, it is clear that at the time of incident, Sunita (PW3) was in the company of the prosecutrix. At that time, the prosecutrix herself had asked Sunita (PW3) not to tell about the incident to anyone and she had herself gone away along with the Appellant. She lived with the Appellant in the jungle for 2 days. She took bath with him in the jungle and also slept with him. She also lived with the woman Karmela for 5 days, but she did not disclose anything to her about the incident. From the evidence available on record, it seems that the prosecutrix was a consenting party. She herself had gone away along with the Appellant and the alleged act was committed with her with her own consent. Thus, 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