

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 720 of 2014

Dharmendra Kamar, S/o. Jalam Kamar, Aged About 21 Years, R/o. Vill. Hardi, P.S. and Tah. and Rev. Distt. Gariyaband, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : P.S. - Gariyaband, Distt. Gariyaband, Chhattisgarh.

-----Respondent

For Appellant	: Mr. Viprasen Agrawal, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Gariyaband, District Gariyaband (C.G.), in Sessions Trial No.42/2013 on 05.06.2014, convicting the appellant for the offence under Section 363 of the Indian Penal Code and sentencing him to undergo R.I. 5 years and fine of Rs.1000/-, for the offence under Section 366 of the Indian Penal Code and sentencing him to undergo R.I. 5 years and fine of Rs.1000/- and for the offence under Section 376 (1) of the Indian Penal Code and sentencing him to undergo R.I. 7 years along with fine of Rs.1000/- with default stipulations.

2. Facts of the case in brief is this that the prosecutrix (P.W.-17) was minor of age about 14 years on the date of incident. It is alleged that this appellant allured the prosecutrix with promise to marry her and then took her to jungle on 18.06.2013 and then committed the offence of rape with her. While the prosecutrix remained in his confinement during abduction, the appellant exploited her sexually on number of occasions. Prosecutrix was recovered on 21.06.2013 from the custody of the appellant vide Panchnama, Ex.P-18 and thereafter, on her information, FIR Ex.P-16 was recorded and offence were registered against the appellant. The prosecutrix was medically examined. The statement of the witnesses were recorded and after completion of investigation, charge-sheet was filed before the concerned trial Court.
3. The trial Court charged the appellant along with other co-accused persons with offence under Section 363, 366, 376 (1), 417 of the Indian Penal Code and Section 3 read with Section 4 of Prevention of Children from Sexual Offences Act. The appellant and the other co-accused persons denied the charges and prayed for trial. The prosecution examined as many as 27 witnesses on its behalf. On examining the appellant and other co-accused persons under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the

appellant stands convicted and sentenced as mentioned aforesaid, however, the co-accused persons have been acquitted of all the charges against them by the trial Court.

4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The age of the prosecutrix has not been proved beyond reasonable doubt by the prosecution that she was below 18 years. Hence, otherwise, she was a consenting party, therefore, the offence under Section 376 of the Indian Penal Code is clearly not made out against the appellant. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellant, which appears to be too harsh, may be reduced.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. The age of the prosecutrix is clearly proved that she is 14 years of age on the date of incident and the statement of the prosecutrix (P.W.-17) is reliable and trustworthy. Therefore, no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Prosecutrix (P.W.-17) has stated in examination-in-chief that on the date of incident, the appellant had by inducement took her to a jungle of village – Hardi. When she was traveling in lorry at that time, the appellant forcefully raped her. The appellant took her to village Charoda to the place of his sister, where he again raped her. She has stated that her brother and others arrived on the place in the next day and then she came to the police station and has informed about the incident on which basis FIR, Ex.P-16 was lodged. In cross-examination her statement has remained unrebutted and unshaken. There is no such material omission or contradiction compared to her previous statement, so as to hold that this witness is not a reliable witness. The prosecutrix (P.W.-17) has not stated anything about her age in examination-in-chief, but in cross-examination on suggestion given by the defence, she denied that she is age of 18 to 19 years and that she is unaware of her date of birth.
9. Mantora (P.W.-18) is the mother of the prosecutrix. She has not made any statement regarding the incident, however, in her cross-examination, she has stated that she is unaware of the

date of birth of prosecutrix and denied that her daughter the prosecutrix is age about 18-19 years on the date of recording evidence.

10. Vishnu (P.W.-19) has stated that his daughter went missing. On making search, he came to know that the prosecutrix is staying in village Charoda, then this witness went to that place and brought the prosecutrix back with him. The prosecutrix narrated about the incident to her aunt and from her, this witness also came to know that his daughter was ravished and raped by the appellant. In cross-examination, the extent to which he has given this statement has remained unrebutted. Further he has stated that the age of his daughter was 14 years, however, he can not remember that the date of birth of her daughter is 15.05.1995. He has denied the adverse suggestions given regarding entry in the school register and clearly denied that his daughter was of age below 18 years.
11. Ishwari Ram (P.W.-1) has stated that he came to know that the prosecutrix was abducted by the appellant. Similar is the statement of Kishun Ram (P.W.-2), who has also stated about the search made for the missing prosecutrix and about her being found in the place in village – Charoda and his statement has remained unrebutted in cross-examination. Rameshwar (P.W.-3), Tomeshwar (P.W.-5) have not made any statement regarding the offence of rape committed. Bhagwan Singh (P.W.-10) has stated about recovery of prosecutrix.

12. Bhagvati Sahu (P.W.-4) has stated that the police has seized the admission register of the school from his possession and the admission register in original vide Ex.P-1. He has stated that according to the admission register Article -1, the date of birth of the prosecutrix was recorded as 15.05.1996 displaying the signature of Vishnu Ram, the father of the prosecutrix. In cross-examination, he has stated that the prosecutrix was admitted to the school by her father. Another school teacher, Khilawan Sahu (P.W.-16) has stated that he had received progress report of the year 2010-11, which is Ex.P.15. In cross-examination, he has stated that date of birth of the prosecutrix was 15.05.1996. He has denied other adverse suggestion in this respect. Niranjana Singh Thakur (P.W.-20) has stated about search.
13. Dr. V. Bara (P.W.-21) has though not given any positive opinion in report Ex.P-23. According to her report, the prosecutrix was habitual to sexual intercourse. Vimlesh Dubey (P.W.-22) is Police Inspector, who has conducted the investigation and Inspector N. Xex (P.W.-26) has also taken part of investigation.
14. After scrutinizing all the evidence of relevant witnesses in this case, I am of this view that the age of the prosecutrix is very clearly suggestive that she had not completed 18 years of age on the date, when the incident took place. There may be some discrepancies regarding their exact date of birth and there may be some variations in the statement made by the witnesses, but the gap of about four years can not be bridged and it can be

assumed that the prosecutrix was of age above 18 years. Therefore, facts and circumstances of the case lead to only this conclusion that the prosecutrix was aged below 18 years on the date of incident. The prosecutrix (P.W.-17) has made clear statement that she was not willing party and the appellant had abducted her and raped her on number of occasions. She has not made any statement regarding consent, hence, the sexual intercourse with prosecutrix by the appellant is clearly an offence of rape. Hence, after due consideration, it is found that the conviction of the appellant for the offence under Section 363, 366, 376 (1) of Indian Penal Code is supported with evidence of prosecution beyond reasonable doubt and there is no reason to interfere with in the same.

15. Considering on the alternative submissions made on behalf of the appellant, the maximum sentence imposed upon the appellants is for offence under Section 376 (1) of the Indian Penal Code is R.I. for 7 years, which is minimum sentence of imprisonment prescribed for this offence, therefore, there is no ground to consider and allow the prayer made, hence, for this reason I do not find any reason to reduce the sentence of imprisonment imposed upon the appellant.
16. Resultantly, the appeal has no merit and it is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge