

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 449 of 2014**

- Ajay Kumar S/o Shyam Rao Meshram, Aged About 21 Years, R/o. Village Biharikala, P.S. Ambagrh Chowki, Civil and Revenue District Rajnandgaon C.G., Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh, through P.S. Ambagarh Chowki, Civil and Revenue District Rajnandgaon C.G., Chhattisgarh

--- Respondent

For Appellant : Smt. Kiran Jain, Advocate.

For Respondent/State: Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****14/02/2019**

1. This appeal has been preferred against judgment dated 04-04-2014 passed in Session Trial No.04/2013 by the Additional Sessions Judge (F.T.C.), Rajnandgaon, C.G. whereby the appellant has been convicted and sentenced in the following manner with direction to run all the jail sentences concurrently:-

Conviction	Sentence
1. U/s 363 of the IPC	R.I. for 3 years and fine of Rs.500/-, in default of payment of fine, further imprisonment for 3 months,
2. U/s 366 of the IPC	R.I. for 5 years and fine of Rs.700/-, in default of payment of fine, further imprisonment for 4 months,
3. U/s 376 of the IPC	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine, further imprisonment for 6 months,
4. U/s 506 of the IPC	Fine of Rs.500/-, in default of payment of fine, imprisonment for 3 months
5. U/s 4 of Protection of Children from Sexual Offences Act, 2012	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine, further imprisonment for 6 months.

2. The case of the prosecution, in brief, is this, that the prosecutrix (PW-4) was present in her house on 20-03-2013. At about 12:00 p.m. she left her house, then the appellant met her and by alluring her with a promise to marry her, he abducted and took her to Village Mongra and from there to Bhilai in a bus and thereby keeping her in confinement the appellant had sexual relationship with the prosecutrix without her willingness and consent and then he also threatened her that in case she disclosed about the incident, then she will be killed by the appellant. Thereafter, when the prosecutrix (PW-4) came back she went to the police station and lodged the FIR (Ex.-P/1), on the basis of which, offences were registered against the appellant. During investigation the prosecutrix (PW-4) was medically examined. Statement of the witnesses were recorded. On completion of the investigation charge sheet was filed against the appellant.
3. The appellant was charged with offence under Sections 363, 366, 376, 506 of the IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. One witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that the prosecutrix (PW-4) had been a consenting party as she never

raised any alarm while accompanying the appellant to different places. Statement of the prosecutrix (PW-4) stands falsified on the basis of the medical report which has been proved by Doctor Sohdra Thakur (PW-8) that the hymen of the prosecutrix was intact and therefore she has opined that no opinion can be given regarding sexual intercourse. Apart from that, the FSL report was also negative as no human spermatozoa were found in the slides prepared with respect to the prosecutrix and the undergarments seized from the prosecutrix and the appellant. Therefore, there is no evidence of prosecution beyond reasonable doubt to hold that the appellant has committed the offence of rape. Hence, it is prayed that the appeal may be allowed and the appellant may be acquitted from the charges.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this regard and submits that the prosecutrix (PW-4) has clearly made statement against the appellant that she was abducted and then raped by the appellant. Therefore, it is not a case of consent. The opinion given by Doctor Sohdra Thakur (PW-8) cannot replace the statement given by the prosecutrix (PW-4) which is clear and cogent as the doctor can only opine and the opinion cannot replace the fact stated by the concerned. Therefore, this appeal is without merit and the same may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-4) has stated that on the date and time of the incident she had been to meet her friend when the appellant came

on a motorcycle and by force and by putting her under threat made her sit on his motorcycle and then he took her to Village Mongra. It is stated that the appellant by putting her under threat kept her in confinement for almost 3 days and during this confinement he committed offence of rape twice on her without her willingness and consent. Thereafter, on her request the appellant took her to his relative's place where she disclosed about the incident, then went to the police station and lodged the FIR (Ex.-P/1). She has stated that her age on the date of making deposition was 15 ½ years. In cross-examination her statement has remained unrebutted and uncontradicted regarding the facts of the incident and regarding the statement of her age.

10. Naseem Bano (PW-1) is mother of the prosecutrix and she has not made any specific statement.
11. Guljar Khan (PW-2) is father of the prosecutrix. He has stated that his daughter went missing on the date of incident. Thereafter, he had been to the police station to lodge the missing report, when he was informed that his daughter has been recovered in Bhilai Chhavani Police Station. He has also not made other specific statement regarding age of the prosecutrix or regarding the incident. However, he has admitted in the leading questions put to him by the prosecutor that the appellant had abducted, wrongfully confined and raped the prosecutrix.
12. Gul Mohammad (PW-3) is brother-in-law of the prosecutrix. He has stated that he was told by the prosecutrix that she was abducted by the appellant on the pretext of marrying her and then he took her to Village Mongra where he kept her in confinement and he also raped

her. However, it has appeared in his cross-examination that he has improved the statement before the Court regarding narration given by the prosecutrix.

13. Rest of the witnesses are witnesses of investigation procedures. Doctor Sohdra Thakur (PW-8) examined the prosecutrix and has reported that on examining her private parts she did not find any injuries and she has found her hymen intact in which one finger was getting entry with difficulty. Therefore, she has not given any specific opinion regarding commission of sexual intercourse with the prosecutrix. In cross-examination her statement has remained unrebutted.
14. Inspector Yadumani Sidar (PW-10) has conducted the investigation in this case.
15. Vimal Bai (DW-1) has stated that the prosecutrix (PW-4) had come to her house along with the appellant and the prosecutrix herself made a statement that she has not come up of age, therefore she will marry with the appellant after one or two years. The appellant and the prosecutrix (PW-4) stayed in her house for two days and then they left. In her cross-examination she has again made statement that the prosecutrix was a minor and there is no specific question put to her that during the stay of the prosecutrix in her house both of them did not have any opportunity to meet each other.
16. The appellant himself has examined under Section 315 of the Cr.P.C. He has stated that he had taken the prosecutrix to his aunt's place and he had knowledge that the prosecutrix was a minor girl, therefore he was waiting for her adulthood to marry her. He has

stated that no physical relation took place between him and the prosecutrix. It is just a statement of denial regarding the incident of rape, however, this evidence also shows that defence itself admits that the prosecutrix was minor on the date of incident. Therefore, removing a minor from the lawful guardianship is itself established and the intention to marry her that is without her attaining age of majority itself shows that the intention was to submitting the prosecutrix for illicit physical relation.

17. After considering on all the evidence present in the record of the trial Court, it has appeared that the prosecution has proved its case beyond reasonable doubt. The statement of the prosecutrix (PW-4) herself is reliable and worthy of credit. The medical opinion given by the examining doctor cannot prevail on the evidence of the prosecutrix herself who is the person of sufficient age to understand what is physical relation and making a statement about it. Therefore, I do not find any infirmity in the order of conviction passed by the Court below in the impugned judgment.
18. Considered on the prayer for reduction of sentence of the appellant. After considering on all the facts and circumstances of this case and also taking into consideration age of the appellant itself, I feel inclined to allow his prayer for reduction in sentence.
19. Consequently, the appeal is allowed in part. Conviction of the appellant under Sections 363, 366, 376, 506 of the IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 are maintained. Fine sentences imposed by the trial Court are also maintained. Jail sentences imposed upon the appellant for the offence under Sections 363, 366 of the IPC are also maintained.

However, the jail sentence imposed upon the appellant for the offence under Section 376 of the IPC and under Section 4 of Protection of Children from Sexual Offences Act, 2012, i.e., R.I. for 10 years for each offence, are reduced to R.I. for 7 years for each offence, with direction of concurrent running of the jail sentences.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil