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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1062 of 2018

Judgment Reserved on : 27.8.2019

Judgment Delivered on : 25.11.2019

Smt. Sonam @ Jyoti Tiwari, W/o Parmeshwar @ Chhotu Tiwari (wrongly mentioned as D/o Parmeshwar @ Chhoui Tiwari), aged about 19 years, R/o Tikrapara, Shiv Mandir Talkies Road, Near Bodh Mandir, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station Civil Line, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

Criminal Appeal No.962 of 2018

Ashish @ Ashu Tiwari, S/o Arvind Tiwari, aged about 28 years, R/o Tifra, Housing Board Colony, Naya Bus Stand, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Civil Line, District Bilaspur, Chhattisgarh

---- Respondent

Criminal Appeal No.980 of 2018

Sidhnath alias Tantan, son of Doman Vishwakarma, aged about 27 years, resident of Masturi, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Police Station Civil Lines, Bilaspur

--- Respondent

Criminal Appeal No.1137 of 2018

Vikki @ Ghanshyam Das Manikpuri, S/o Late Manharan Das Manikpuri, aged about 24 years, R/o Latiyapara, Thana Masturi, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Thana Civil Line, District Bilaspur, Chhattisgarh

--- Respondent

and

Criminal Appeal No.1045 of 2018

Himanshu @ Chhota Manikpuri, age 22 years, S/o Manharan Manikpuri, R/o Village Latiyapara, P.S. Masturi, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the District Magistrate Bilaspur, Chhattisgarh, P.S. Civil Line

--- Respondent

For Respective Appellants : Shri Pushpendra Singh Baghel, Shri Raj Kumar Gupta, Shri Rajeev Kumar Dubey, Shri Vivek Shrivastava, Advocates

For State/Respondent : Smt. Hamida Siddique, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. All the above mentioned appeals arise out of a common judgment, therefore, they are disposed of together.
2. The appeals have been preferred against the judgment dated 12.6.2018 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act

(henceforth 'the PoA Act'), Bilaspur in Special Criminal Case SCST (PA) Act 1989 No.22 of 2016, whereby the Appellants have been convicted and sentenced as under:

Criminal Appeal No.1062 of 2018
Appellant Smt. Sonam alias Jyoti Tiwari

<u>Conviction</u>	<u>Sentence</u>
Under Section 109 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.10,000/- with default stipulation
Under Section 109 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.10,000/- with default stipulation
Under Section 506 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 365 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.1,000/- with default stipulation
Under Section 343 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
	All the sentences are directed to run concurrently

Criminal Appeal No.962 of 2018
Appellant Ashish alias Ashu Tiwari

<u>Conviction</u>	<u>Sentence</u>
Under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act')	Rigorous Imprisonment for 7 years and fine of Rs.10,000/- with default stipulation

Criminal Appeal No.980 of 2018
Appellant Sidhnath alias Tantan

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5,000/- with default stipulation
Under Section 4 of the Pocso Act	Rigorous Imprisonment for 7 years and fine of Rs.10,000/- with default stipulation
	Both the sentences are directed to run concurrently

Criminal Appeal No.1137 of 2018
Appellant Vikki alias Ghanshyam Das Manikpuri

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5,000/- with default stipulation
Under Section 506 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 365 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.1,000/- with default stipulation
Under Section 343 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 4 of the Pocso Act	Rigorous Imprisonment for 10 years and fine of Rs.10,000/- with default stipulation
Under Section 3(1)(xii) of the PoA Act	Rigorous Imprison for 2 years and fine of Rs.2,000/- with default stipulation
	All the sentences are directed to run concurrently

Criminal Appeal No.1045 of 2018
Appellant Himanshu alias Chhota Manikpuri

<u>Conviction</u>	<u>Sentence</u>
Under Section 4 of the Pocso Act	Rigorous Imprisonment for 7 years and fine of Rs.10,000/- with default stipulation

3. Case of the prosecution, in brief, is that on the relevant date, age of the prosecutrix (PW3) was about 16 years. In the year 2015, she was studying in XIth standard in Devkinandan Dixit School, Bilaspur and was residing in Post Matric Anusuchit Jati Kanya Chhatrawas, Bilaspur along with Padmini Banjare (PW4). Both got acquainted with each other. In August, 2015, Padmini Banjare introduced Appellant Vikki alias Ghanshyam Das Manikpuri with the prosecutrix in Magneto Mall, Bilaspur. Appellant Vikki gave his

mobile number to the prosecutrix and thereafter they were talking to each other on phone. On the day of *tija* festival in the year 2015, by a phone call, Appellant Vikki called the prosecutrix out of her hostel and telling her that he will take her for roaming took her to the house of his friend Vishal Kumar Patre (PW13) situated at Village Masturi. There Appellant Vikki committed sexual intercourse with the prosecutrix after shutting the door and thereafter he asked her not to disclose about this to anyone. Thereafter, he left her at her hostel. In December, 2015, Appellant Sonam @ Jyoti Tiwari and Padmini Banjare came to the prosecutrix in the hostel. At that time, Appellant Sonam and the prosecutrix got acquainted with each other. Thereafter, they used to talk to each other on phone. Appellant Sonam told the prosecutrix that Appellant Vikki is her husband. Thereafter, Appellant Vikki tendered his apology to the prosecutrix on phone and called her to the Magneto Mall. She went to the Mall. There Appellant Vikki introduced her with Appellant Sidhnath alias Tantan. There both these Appellants telling the prosecutrix that time was of night took her to Village Masturi Kirari. Appellant Vikki returned from there and Appellant Sidhnath made physical relationship with the prosecutrix in his shop at that village. In the next morning, Appellant Sidhnath gifted a suit to the prosecutrix and left her at her hostel. On 31.12.2015, Appellant Sonam called the prosecutrix at her house. The prosecutrix went to her house along with Padmini Banjare (PW4) in the evening. Appellants Vikki, Sidhnath, Himanshu alias Chhota Manikpuri and acquitted accused Yashwant @ Monu Thakur were also present there. All these persons took dinner. Thereafter, Padmini and the prosecutrix went to the room for sleeping. Thereafter, Appellant

Sonam called Padmini out of that room and sent acquitted accused Yashwant inside the said room. Thereafter, Yashwant made physical relationship with the prosecutrix in the said room. Thereafter, Appellant Sonam asked the prosecutrix to stay at that house and to attend her school from there. On this, the prosecutrix stayed there till 9.1.2016. on 2.1.2016, Appellant Himanshu made physical relationship with the prosecutrix at the house of Appellant Sonam. 2-3 days thereafter, Appellant Sonam called Appellant Ashish alias Ashu Tiwari telephonically to her house. Appellant Ashish reached her house and thereafter took the prosecutrix and Appellant Sonam in a car to his house at Tifra, Bilaspur. In the night, Appellant Sonam asked the prosecutrix to sleep with Appellant Ashish. The prosecutrix did so. In the next morning, Appellant Ashish left both the prosecutrix and Appellant Sonam to the house of Appellant Sonam. Thereafter, on 11.1.2016, Appellant Sonam again went to the hostel of the prosecutrix and took her out from there saying that both will go for roaming. Thereafter, she called acquitted accused Mohd. Lukman alias Monu and sent the prosecutrix with him. Thereafter, Mohd. Lukman took the prosecutrix to the house of his friend and made physical relationship with the prosecutrix there. On 9.2.2016, the prosecutrix left a letter at the hostel that she was going to the house of her sister and left the hostel. On 13.2.2016, the prosecutrix returned the hostel in the evening. Appellants Sonam and Vikki reached behind her to the hostel and threatening her took her away along with them. On 15.2.2016 at 2:30 p.m., the prosecutrix returned her hostel. Behind her, Appellant Sonam also came to her and threatened her. Hostel Superintendent Smt. Sharda Dhritlahre (PW1) made a written complaint in this regard in

the police station on the basis of which offences under Sections 363, 365, 34 of the Indian Penal Code were registered. Statement of the prosecutrix was recorded under Section 161 of the Code of Criminal Procedure. On the basis of her statement, other offences were added. Statements of other witnesses were also recorded. During the course of investigation, a mark-sheet (Ex.P20) of the prosecutrix was seized from her father Bedram Anchali (PW6) vide seizure memo (Ex.P16). Dakhil-Kharid register (Ex.P66) was also seized vide seizure memo (Ex.P67). According to the entries made in the mark-sheet and in the dakhil-kharid register, date of birth of the prosecutrix is 12.9.1999. On completion of the investigation, charge-sheet was filed. Charges were framed against Appellant Vikki under Sections 376(1), 366, 506, 365, 343 of the Indian Penal Code and Section 4 of the PoA Act. Charges were framed against Appellants Himanshu, Ashish and acquitted accused persons Yashwant and Mohd. Lukman under Section 376(1) of the Indian Penal Code. Against Appellant Sidhnath charges were framed under Sections 376(1), 366 of the Indian Penal Code and Section 4 of the PoA Act. Against Appellant Sonam, charges under Sections 109/115 (3 counts), 506, 365, 343, 370(A) of the Indian Penal Code were framed. Against Appellants Vikki, Ashish, Sidhnath, acquitted accused Yashwant and Mohd. Lukman, additional charges under Section 3(1)(xii) of the PoA Act were framed. Against Appellant Vikki, acquitted accused Yashwant, Appellant Himanshu, acquitted accused Mohd. Lukman, Appellants Ashish, Sidhnath, Sonam, charge under Section 3(2)(v) of the PoA Act was also framed.

4. In support of its case, the prosecution examined as many as 29 witnesses. In examination under Section 313 of the Code of

Criminal Procedure, the accused persons denied the guilt. No witness has been examined in their defence.

5. After trial, the Trial Court acquitted accused persons Yashwant and Mohd. Lukman of all the charges framed against them, but convicted and sentenced the present Appellants as mentioned in second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Respective Appellants submitted that the present Appellants have wrongly been convicted by the Trial Court without there being sufficient evidence on record against them. The entire story narrated by the prosecutrix is suspicious and not natural. She never made any complaint at any point of time to anyone. If the entire statement of the prosecutrix is taken as it is, it is well established that she was a consenting party to the alleged act done with her. The Trial Court has wrongly arrived at the conclusion that at the time of incident age of the prosecutrix was below 18 years. From a bare perusal of the statement of father of the prosecutrix, it is well established that on the relevant date, the prosecutrix was aged more than 18 years. The doctor had also advised for ossification test of the prosecutrix for determination of her age, but the prosecution did not conduct ossification test of the prosecutrix for the reasons best known to them. Since on the date of incident, age of the prosecutrix was above 18 years and she was a consenting party to the alleged act, no offence is made out beyond reasonable doubt. Thus, the finding of the Trial Court is perverse and not in accordance with the evidence available on record.
7. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.

8. I have heard Learned Counsel appearing for the parties and perused the record minutely.
9. I shall first consider the evidence on record with regard to age of the prosecutrix. In this regard, 2 documentary evidence are available on record. They are dakhil-kharij register (Ex.P66) and mark-sheet (Ex.P20) of the prosecutrix. According to the entries made in these two documents, date of birth of the prosecutrix is 12.9.1999. The alleged incident took place in December, 2015. As stated by the prosecutrix (PW3), in the year 2015, she was studying in XIth standard. In her Court statement, the prosecutrix (PW3) has not been able to state her date of birth and whatever has been stated by her regarding her date of birth is based on the entries made in her mark-sheet (Ex.P20). Her father Bedram (PW6) has also deposed that he also stated her date of birth on the basis of the entries made in the mark-sheet (Ex.P20). He has further deposed that he had got the prosecutrix admitted in the Primary School Mathpur in 1st standard. He has also admitted that he did not get the birth particulars of the prosecutrix entered in the kotwari register. According to the entries of dakhil-kharij register (Ex.P66) also, date of birth of the prosecutrix is 12.9.1999.
10. Teacher Sarla Ahire (PW28) has stated that in the entry made at Sl.No.355 of dakhil-kharij register (Ex.P66), date of birth of the prosecutrix is 12.9.1999 and date of her admission in Ist standard is 10.8.2004. She was not able to state that on what basis the entries were made in the dakhil-kharij register and who made those entries in the said register.
11. Bedram (PW6), father of the prosecutrix has stated in paragraph 6 of his cross-examination that he was aged about 19 years at the

time of his marriage. 1½ years thereafter, his first child was born and thereafter with an interval of 1–1½ years, his remaining 2 children including the prosecutrix were born. On the date of recording of his statement in the Court, his apparent age is mentioned as 45 years. If he got married on his age of 19 years and his all the 3 children born with an interval of 1–1½ years then his all the 3 children would have taken birth on his age of 25 years. In these circumstances, in the year 2015, age of the prosecutrix establishes to be 18-19 years. Bedram (PW6) has further stated in paragraph 9 that he got the prosecutrix admitted in the school in 1st standard on her age of 7-8 years. As stated by teacher Sarla Ahire (PW28), admission of the prosecutrix in the school was done on 10.8.2004. In these circumstances, on 10.8.2004, i.e., on the date of her admission in the school, age of the prosecutrix was 7-8 years and in the year 2015 when she was studying in XIth standard her age establishes to be 18-19 years.

12. From the evidence discussed above, it is well established that though in dakhil-kharij register (Ex.P66) and in mark-sheet (Ex.P20), date of birth of the prosecutrix is mentioned as 12.9.1999, who made those entries in these 2 documents and on what basis the entries were made in these documents is not established. No entry regarding date of birth of the prosecutrix was got recorded in the kotwari register. Despite being suggested by the doctor, ossification test was not conducted by the prosecution for determination of age of the prosecutrix. From the statement made by Bedram (PW6) in paragraphs 6 and 9, age of the prosecutrix in the year 2015 establishes to be between 18 and 19 years. Thus, the finding of the Trial Court that on the date of incident age of the prosecutrix was below 18 years is not in

accordance with the evidence available on record.

13. With regard to the alleged incident, only the Hostel Superintendent Sharda Dhritlahre (PW1) has identified Appellant Sonam. In her Court statement, she has stated that on 9.2.2016, the prosecutrix, leaving a letter in the hostel that she had to go to the house of her sister, went out. On 13.2.2016, Gangabai Yadav (PW2) and Rajkumari Diwaker (PW11), both cook of the hostel had told this witness that the prosecutrix went out of the hostel along with one boy on a motorcycle. Thereafter, on 15.2.2016, the prosecutrix returned to the hostel. This witness called the prosecutrix to her. At that time, a telephonic call of Appellant Sonam came to the prosecutrix. Then this witness called Appellant Sonam. Sonam came to this witness. Then this witness called police at the hostel and thereafter she made the written complaint (Ex.P1). This witness has turned hostile. In her cross-examination in paragraph 12, she has stated that in the police station she was asked by the police officials to give a complaint in writing and, therefore, she made the written complaint. Gangabai (PW2) and Rajkumari (PW11) have also not supported the case of the prosecution and turned hostile.

14. The prosecutrix (PW3) in her Court statement has stated that she took admission in the hostel in July, 2015. In the hostel, her friendship developed with Padmini Banjare. Thereafter, she went along with Padmini Banjare to Magneto Mall. Padmini Banjare introduced her with Appellant Vikki in the Mall. Thereafter, talks started between her and Appellant Vikki. She has further stated that on the day of *tija* festival, Appellant Vikki called her at the gate of her hostel. She came out of the hostel and went out along with

Appellant Vikki on his bike for roaming. Appellant Vikki took her to the house of his friend Vishal (PW13) at Village Masturi. She stayed in a room of that house for 1 day. During her stay at the house, Appellant Vikki forcibly committed wrong with her. But, Vishal (PW13) has not supported the above statement of the prosecutrix and turned hostile. The prosecutrix has further stated that 1 week thereafter Appellant Vikki made her a telephonic call and tendered his apology. He called her to meet him. On her refusal, he threatened her and asked her to come to Magneto Mall. She went to Magneto Mall. There she met with Appellants Vikki and Tantan. While roaming, the time spent and it became evening. Then she asked them to leave her at her hostel. They saying that they will leave her at her hostel took her on their motorcycle. Thereafter, they took her to the shop of Appellant Tantan situated in Village Kirari. Thereafter, Appellant Vikki went away and Appellant Tantan committed wrong with her in his shop. Next day, Appellant Tantan gifted her a suit and asking her not to disclose the matter to anyone left her at her hostel. She has further stated that in December, 2015, Appellant Sonam came to the hostel along with Padmini Banjare. During stay of Sonam at the hostel for 2 days, this witness got acquainted with her. Thereafter, on an invitation of Appellant Sonam for celebrating 31st December, she went to the house of Sonam along with Padmini Banjare. After celebrating the new year, this witness and Padmini Banjare slept in the night in a room of the house of Appellant Sonam. In the night, Appellants Sonam and Vikki called and took out Padmini from the room and sent acquitted accused Yashwant inside that room where he committed rape with her in that night. In the next morning, Appellant Vikki, Padmini and Yashwant returned back.

Appellant Sonam asked this witness to stay at her house and attend her school from her house. On being asked so, this witness stayed at the house of Appellant Sonam. 2 days thereafter, Appellant Sonam called Appellant Ashish. Then Appellants Sonam and Ashish and this witness went to the house of Appellant Ashish situated at Tifra, Bilaspur in a car. There 3-4 boys were already present. All the persons took dinner there. Thereafter, Appellant Sonam shut this witness along with Appellant Ashish in a room there. Thereafter, Appellant Ashish committed rape with her in that night. In the next morning, at about 10-11 a.m., Appellant Ashish took this witness and Appellant Sonam and left them at the house of Appellant Sonam. This witness has further stated that on 7th or 8th of January, 2016, Appellant Himanshu came to the house of Appellant Sonam. Sonam introduced Himanshu with her as younger brother of Appellant Vikki. In the night, Appellant Himanshu committed rape with her. This witness has further stated that on 9.1.2016, she returned to her hostel with her mobile phone and started living at her hostel. Thereafter, Appellant Sonam had been threatening her to come back otherwise she will take her out of the hostel. On 8th or 9th of February, 2016, Appellant Sonam again threatened her. On this, this witness leaving a letter in the hostel went to the house of Appellant Sonam. She stayed at the house of Appellant Sonam till 13.2.2016. on 13.2.2016, Appellants Sonam and Vikki came to her hostel. Sonam dragged her by her hand from her room to the gate of the hostel. Appellant Vikki started abusing her at the gate. Appellants Sonam and Vikki forcibly made her sit on a bike and thereafter she was taken away from there. On 15.2.2016, this witness telling Appellant Sonam that she had received a telephonic call from her

father returned from the house of Appellant Sonam and came to her hostel. When she was narrating the incident to the Hostel Superintendent, at that time itself, a telephonic call of Appellant Sonam came to her. On this, the Hostel Superintendent talked to Appellant Sonam and asked her to come to the hostel. On reaching Sonam to the hostel, the Hotel Superintend called police at the hostel. In her cross-examination, the prosecutrix has stated that when she was shut in the house of Vishal (PW13) at Village Masturi, at that time, she had shouted loudly. She has further stated that on the next day, at about 11-12 a.m., Appellant Vikki had left her at the gate of the hostel. At that time, she had not made any complaint to anyone. In paragraph 28, she has further stated that in the night of 31st December, 2015, she did not see the person who committed sexual intercourse with her. On being told by Padmini Banjare, she came to know that the said person was Yashwant. In paragraph 29, she has admitted that she had a mobile phone on which she had been talking to her family members, but she never told about the incident to her family members. In paragraph 40, she has further stated that in Village Kirari, she had stayed at the shop of Appellant Tantan for about 10-12 hours and when he started doing wrong with her forcibly, she shouted for about 10 minutes. Thereafter, Appellant Tantan gagged her mouth. She has further stated that Appellant Tantan did not commit any *marpeet* with her and on the next day he himself had left her on his bike to her hostel. At that time also, she did not make any complaint to anyone. She has further stated that on 31.12.2015, Appellant Tantan had met with her at the house of Appellant Sonam. There also, this witness did not make any complaint against Appellant Tantan.

- 15.** Padmini Banjare (PW4) has also not supported the case of the prosecution and turned hostile. Priyanka Tandaon (PW7), one of the students, who was also residing in the hostel has not supported the case of the prosecution and turned hostile. Sangeeta (PW8), cook of the hostel has also not supported the case of the prosecution and turned hostile. Constable Neelam Yadav (PW9) and Lance Nayak Salomi Rani (PW10) were deputed to discharge their duties at the hostel in question. Both have also not supported the case of the prosecution and turned hostile. Trilochan Singh (PW14) and Seema Lader (PW17) are witnesses in whose houses Appellant Sonam had lived as their tenant for some period. Both these witnesses have stated that they had expelled Appellant Sonam out of their houses because of her suspicious activities. Sub-Inspector J.R. Banjare (PW20) recorded First Information Report (Ex.P2) on the basis of the written complaint (Ex.P1) made by the Hostel Superintendent.
- 16.** Inspector Vinodini (PW19) recorded statement of the prosecutrix under Section 161 of the Code of Criminal Procedure. Dr. Nilesh Thakur (PW21) examined the prosecutrix on 16.2.2016. Her report is Ex.P18 in which she opined that no definite opinion could be given regarding recent sexual intercourse with the prosecutrix. She opined that the prosecutrix was habitual to sexual intercourse. 2 fingers entered easily into her vagina. No injury on any part of her body was found. For determination of her age, this witness advised for ossification test.
- 17.** Deputy Superintendent of Police Nasar Siddiqui (PW22), Additional Superintendent of Police Varsha Mishra (PW27) and Head Constable Manoj Rajput (PW29) are the witnesses who investigated the

offence in question in part. Other witnesses, namely, Satyendra Mishra (PW24) and Subhash Singh (PW25) have also not supported the case of the prosecution and turned hostile.

18. Hostel Superintendent Sharda (PW1), in paragraphs 13, 14 and 15 of her cross-examination, has admitted the fact that homeguards were present at the gate of the hostel for 24 hours. A lady homeguard also remained present in the girls hostel. A separate shade is made for meeting with visitors. Permission is granted to the students staying at the hostel only to meet with their parents and with the persons whose photographs are pasted in the visitors' register. This witness has further stated that she herself marks attendance of the students in the attendance register daily in the evening. In paragraph 20, she has admitted that in December, 2015, according to the attendance register, attendance of the prosecutrix for all the days excluding the period of winter vacation is marked as her presence. She has further admitted that in January, 2016, attendance of the prosecutrix for the whole month is marked as her presence. In the month of February, 2016 also, presence of the prosecutrix is marked for the period from 1.2.2016 to 8.2.2016. In paragraph 26, she has further admitted that from 31.12.2015 to 9.1.2016, presence of the prosecutrix is marked in the hostel attendance register.

19. On a minute examination of the above evidence on record, it is clear that as stated by the prosecutrix, first incident took place with her by Appellant Vikki on the day of *tija* festival. But, she never made any complaint in this regard to anyone and she returned from Village Masturi along with Appellant Vikki himself. Later on also, both continued to meet with each other. But, she never made

any complaint. With regard to Appellant Tantan, from the evidence of the prosecutrix, it is established that she herself stayed at the shop of Appellant Tantan for the whole night and she was gifted a suit also by him next day of her stay and he went along with her to leave her at her hostel. On 31.12.2015 also, Appellant Tantan met with the prosecutrix at the house of Appellant Sonam where many persons were already present. But, she did not make any complaint against Appellant Tantan to anyone. With regard to Appellant Ashish, as stated by the prosecutrix, in the first week of January, 2016, at the house of Appellant Ashish, he had committed rape with her, but, she herself has admitted that on the next day, it was Appellant Ashish who left her at the house of Appellant Sonam. At that time or even later on, she did not make any complaint against Appellant Ashish to anyone. With regard to Appellant Himanshu, on 7th or 8th of January, 2016, Appellant Himanshu had stayed at the house of Appellant Sonam and committed rape with the prosecutrix, but against him also, she did not make any complaint to anyone.

20. According to the statement of Hostel Superintendent Sharda (PW1), attendance of the prosecutrix in the hostel attendance register was marked for the whole month of January, 2016 including 31st December, 2015. In these circumstances, statement of the prosecutrix that she stayed at the house of Appellant Sonam from 31.12.2015 to 9.1.2016 and during that period Appellants Ashish and Himanshu committed the alleged act with her at the house of Appellant Sonam and she would have stayed at her house is not reliable. With regard to the incident of 13.2.2016 and 15.2.2016 also, the cooks and homeguards of the hostel have not supported the case of the prosecution. On a minute examination

of the statement of the prosecutrix and the other evidence available on record, it seems that the whole incident is not natural and unreliable. Even if for the sake of argument, it is considered that the incident in question had taken place with the prosecutrix, from the statement of the prosecutrix itself it is established that she was a consenting party. On the relevant date, age of the prosecutrix was below 18 years is not proved and as stated by her father Bedram (PW6) it seems that her age on the relevant date was about 19 years. Hence, no offence is made out against any of the Appellants.

21. Consequently, all the appeals are allowed. The impugned judgment of conviction and sentence is set aside. All the Appellants are acquitted of the charges framed against them.
22. 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