

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 220 of 2014**

Vijay Kumar Sahu S/o. Chunu Ram Sahu Aged About 21 Years R/o. Vill.Bhatgaon, Post And P.S.- Ranchirai Civil And Rev. Distt.Balod C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through The District Magistrate Balod, Civil And Rev. Distt. Balod C.G., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Jitendra Gupta, Advocate.
For Respondent/ State	:	Shri Lav Sharma, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****16/01/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.1.2014 passed by Learned Sessions Judge, Balod, District Balod, Chhattisgarh in Sessions Trial No. 34 of 2013 whereby and whereunder the learned Sessions Judge after holding the appellant guilty for the offences under Sections 450 and 376(2)(F) of the Indian Penal Code, has sentenced him to undergo rigorous imprisonment for 10-10 years and to pay fine of Rs.5,000-5,000/- each, in default of payment of fine, to further undergo additional RI for 3-3 months, respectively with a direction to run both the sentences concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 5.2.2012 at about 2:30 pm in the evening the appellant came to the house of the prosecutrix (PW-6) and asked her to come to the roof and then by taking her to a room in the roof by force, he committed the offence of rape with her. During this act, father of the prosecutrix, Tameshwar Sahu (PW-7) came on the spot. On seeing him, the appellant ran away. FIR of this incident was lodged by the prosecutrix (PW-6) in the police station on 1.3.2012. The prosecutrix who was aged about 12 years was medically examined and the positive report vide Ex.P/4 was given by the examining doctor Dr. Rajni P. Jain (PW-3) that the prosecutrix was subjected to the offence of rape. The appellant was also medically examined and found fit for sexual intercourse. The other procedure of the investigations were completed.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant was charged for the offences under Sections 450 and 376(2)(F) of the IPC. He denied the charges and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 13 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defence.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the prosecution has not been able to prove that the age of the prosecutrix was below 18 years on the date of incident. According to the admissions made by the prosecutrix (PW-6) herself it clearly appears that the prosecutrix was a consenting party. Although the school entry has been proved by Panchuram Sahu (PW-10), but he is not the author of the entry which is necessary to prove the recorded date of school entry register and these were the short-comings of the investigation of this case, because of which, the appellant is entitled for acquittal. Hence, no case of conviction is made out against the appellant and it is prayed that the appellant be acquitted in the case. In the alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, looking to the long detention of the appellant in jail, his sentence of imprisonment be reduced to the period of custody already undergone by him.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt.

(10) It is not denied by the appellant at the appellate stage that the appellant had sexual intercourse with the prosecutrix on the date of incident, hence, this being found proved before the trial Court and being not disputed by the appellant, needs no further consideration and it is held that the appellant had sexual intercourse with the prosecutrix on the date of incident i.e. 5.2.2012. The only issue that remains to be considered is whether the age of the prosecutrix was below 12 years on the date of incident and this has been proved by the prosecution by bringing evidence beyond reasonable doubt, hence, no case is made out for modification of the impugned judgment.

(11) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(12) The prosecutrix (PW-6) has stated that her date of birth is 24.8.2000. In her examination-in-chief and in cross-examination she has admitted the possibility that her date of birth may have been given by her father in-approximate manner and it can be said that a child knows about his or her date of birth on the basis of the information given by her parents. Tameshwar Sahu (PW-7) has not made any statement regarding date of birth of his daughter/ the prosecutrix in his examination-in-chief and no such question has been put to her in cross-examination. No other person has been examined by the prosecution on this point who may have been close to the appellant or close to the prosecutrix to know her date of birth.

(13) Dr. Rajni P. Jain (PW-3) has stated that the age of the prosecutrix was 11 ½ years which she has mentioned in her report Ex. P/4 and this statement has not been challenged in her cross-examination. The school entry register has been seized in this case in proof of age of the prosecutrix. Panchuram Sahu (PW-10), the Assistant Teacher of the said school has stated that according to the entry in the school register the date of birth of the prosecutrix was 24.8.2000. In cross-examination, he has admitted that he is not the author of the entry proved by them and he is unable to make a statement that on what basis the date of birth was entered in the school register. He was further unable to make a statement that the date of birth of the prosecutrix was informed in-approximate or not.

(14) Dr. B.N. Dewangan (PW-13) is the Radiologist who has examined the prosecutrix radiologically and reported that her age may have been between 14-15 years. In cross-examination, there is no admission made by him so as to hold that the prosecutrix may have been aged about 18 years.

(15) After considering the witnesses of relevance present on record of the trial Court, I am of this opinion that though the evidence with exactness and accurateness was not present to hold that on the date of incident the prosecutrix was aged below 18 years, because of the admission made by the witnesses that the date of birth informed to the school may be approximate, whereas, the evidence of the radiologist has pointed that the age of the prosecutrix may have been between 14-15

years. Hence, in this case the prosecution had clearly proved by bringing cogent and reliable evidence to hold that the age of the prosecutrix was not below 14 years, therefore, it is not proved that her age was 12 years or below.

(16) After scrutinizing the evidence of the relevant witnesses present on record of the trial Court, the conviction of the appellant under Section 376(2)(F) of the IPC is set aside. Instead of that the appellant is now convicted for the offence under Section 376(1) of the IPC as it existed prior to the amended date i.e. 3.2.2013 and the appellant is sentenced to RI for 7 years and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo additional RI for 3 months. The conviction imposed upon the appellant under Section 450 of the IPC is also upheld.

(17) Considered on the prayer made for reduction of sentence. After due consideration of all the evidence and on the basis of the discussions made herein-above, this appeal is allowed in part. The sentence imposed upon the appellant for the offence under Section 450 of the IPC is reduced to RI for 7 years alongwith fine of Rs.5,000/-.

(18) Accordingly, the appeal is disposed off with such modification and the period of sentence already undergone by the appellant is adjusted.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE