

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 451 of 2014**

- Somnath @ Som S/o Siyaram Yadav, Aged About 25 Years, R/o. Karaihapara, Ratanpur, Distt. Bilaspur C.G., Chhattisgarh

---- Appellant**Versus**

- The State of Chhattisgarh Through P.S. Ratanpur, Distt. Bilaspur C.G., Chhattisgarh

--- Respondent

For Appellant : Shri Parag Kotecha, Advocate.

For Respondent/State: Shri Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

27/06/2019

1. This appeal has been preferred against judgment dated 28-03-2014 passed in Special Session Case No.168/2013 by the Special Judge under Protection of Children from Sexual Offences Act (in short 'POCSO Act') and Additional Sessions Judge (F.T.C.), Bilaspur, Chhattisgarh convicting the appellant under Section 363, 366 of the IPC and Section 4 of POCSO Act and sentencing him with R.I. for 4 years, R.I. for 4 years and R.I. for 10 years along with fine of Rs.3000/-, Rs.3000/- and Rs.10000/- respectively with default stipulations and direction that all the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that the appellant abducted the minor prosecutrix on 01-01-2013 and kept her in his custody for about one month during which she was sexually exploited by him. A missing report was lodged on 03-01-2013.

The prosecutrix was recovered on 10-02-2013 vide recovery memo (Ex.-P/1) from the custody of the appellant. Then on the basis of the information given by the prosecutrix the FIR was lodged on 11-02-2013. The case was investigated and charge sheet was filed before the Court below.

3. The appellant was charged under Section 363, 366, 376(2)(अ) of the IPC and Section 4 of POCSO Act, 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. No 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 appellant has been erroneously convicted by the trial Court without there being any evidence of prosecution beyond reasonable doubt. The prosecutrix (PW-1) herself discloses that she had been a willing and consenting party throughout. The age of the prosecutrix was below 18 years this has not been proved by the prosecution beyond reasonable doubt. The prosecutrix (PW-1) herself has stated that her date of birth is 17-03-1998, whereas, her father has stated that her date of birth is 17-03-1997 which is contradictory statement. Therefore, this should not

have been believed by the Court below. The prosecution has deliberately suppressed the report of the radiologist at the time of trial because the report stated the age of the prosecutrix to be above 18 years. Therefore, that report may be taken notice of by this Court. Hence, on this basis it can be said that the prosecution has failed to prove the minority of the prosecution. Therefore, the applicant is entitled for acquittal. In the alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charges, then his sentence of imprisonment may be reduced to the period already undergone by him in jail.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this respect and submits that the prosecutrix (PW-1) has herself and her parents have authority to make statement regarding age and date of birth of the prosecutrix, whereas, the opinion of the radiologist is just an opinion which cannot rebut the statement made by the witnesses. Hence, the prosecution has clearly established that the prosecutrix was minor on the date of incident. Hence, the appellant is not entitled for acquittal or any relief.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. At the stage of this appeal and on the basis of the finding of the Court below it appears that there is no dispute that the prosecutrix had accompanied the appellant to stay in various places and both of them had physical relation on a number of

occasions. Therefore, the only issue is whether the physical relation of the appellant with the prosecutrix amounts to rape on account of minority of the prosecutrix

10. The prosecutrix (PW-1) has stated before the Court that her date of birth is 17-03-1998. In cross-examination her statement has remained unrebutted and not a single question has been put to her to rebut or contradict her statement regarding her date of birth. Although, question was put to her that her age was 20 years to which she had denied.
11. Hemlata Shrivastava (PW-7) is mother of the prosecutrix, who had stated that age of the prosecutrix is about 16 years and she does not remember her exact date of birth. There is no specific denial to the statement made by her in her cross-examination.
12. Sunil Kumar (PW- 8) is father of the prosecutrix, who has stated that date of birth of the prosecutrix and his daughter is 17-03-97. In cross-examination he has reiterated that he has informed the same date in the school at the time of admission of his daughter. He has denied the adverse suggestion with respect to the age of the prosecutrix.
13. Ex-P/12 is copy of entry of the school register which has been exhibited by the IO Santosh Yadav (PW-9). This document has not been formally proved by presenting the person who had made this entry or the person having custody of this register, therefore, this cannot be referred to in the evidence.
14. The statement of the witnesses on the point of the age of the

prosecutrix has been discussed hereinabove and that is the only evidence present with respect to the date of birth and age of the prosecutrix. There is nothing present in the evidence of all the witnesses to hold that the statement given regarding the age of the prosecutrix has been contradicted. Apart from that, parents of the prosecutrix are the persons having authority to make a statement regarding her age and her date of birth. There is nothing to suggest on the basis of the evidence present that the prosecutrix was of age above 18 years on the date of incident. Therefore, the evidence present is sufficient to hold that the prosecutrix was minor on the date of incident. Hence, the trial Court has committed no error in coming to this conclusion that the prosecutrix was a minor on the date of incident. Therefore, on this basis, the cohabitation of the appellant with the prosecutrix amounts to commission of offence of rape and because of the minority of the prosecutrix the offence of abduction and seducing for the purpose illicit intercourse are also made out. Hence, I do not find any error in the finding of the Court below in convicting the appellant for the offence as abovementioned.

15. Considered on the prayer made for reduction in sentence. Considering the facts and circumstances of this case, I am of this opinion that punishing the appellant with minimum sentence prescribed under Section 4 of POCSO Act can serve the purpose. Therefore, this appeal is allowed in part. Conviction of the appellant as aforementioned is maintained. The jail

sentences imposed upon the appellant for the offence under Section 363, 366 of the IPC are maintained and the fine sentences awarded thereunder are also maintained. However, the jail sentence against the appellant for the offence under Section 4 of POCSO Act is interfered with and now, for this offence the appellant is sentenced for a period of 7 years rigorous imprisonment along with fine of Rs.500/- with direction of concurrent running of all the jail sentences. In case of non-payment of the fine amount imposed upon the appellant under Section 4 of POCSO Act by this Court, the appellant shall have to undergo additional R.I. for 2 months.

Sd/-
(Rajendra Chandra Singh Samant)
Judge