

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.303 of 2015

Judgment Reserved on : 20.9.2019

Judgment Delivered on : 19.12.2019

Netram Yadu @ Ashwini @ Sunil @ Golu, S/o Tekram Yadu, aged about 20 years, R/o Village Suryanagar, Gogaon, Police Station Gudhiyari, Civil and Revenue District Raipur, Chhattisgarh, Permanent R/o Village Nakti (Baikunth) Police Station Nakta, Civil and Revenue District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Gudhiyari, Civil and Revenue District Raipur, Chhattisgarh

--- Respondent

For Appellant : Shri Vaibhav A. Goverdhan, Advocate
For Respondent : Smt. Hamida Siddiqui, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 9.2.2015 passed by the Additional Sessions Judge (FTC), Raipur in Sessions Trial No.338 of 2014, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.200/- with default stipulation
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation

Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act')	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation
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2. Facts of the case, in brief, are that on the relevant date, age of the prosecutrix (PW3) was below 18 years. On 6.9.2013, mother of the prosecutrix, namely, Punni Sahu (PW4) lodged First Information Report (Ex.P8) of missing of the prosecutrix stating therein that the prosecutrix was missing since 5.9.2013. She reported that the prosecutrix went to the school, but did not return thereafter. On being inquired, one Ramdulari told her that the prosecutrix was going away along with one boy. On 14.9.2013, the prosecutrix returned home. Her statement was recorded in which she disclosed that on the date of incident, when she was returning along with her friend Manju, on the way, the Appellant made her sit in an auto against her will and took her to Village Palod, New Raipur. There he kept her for a week at the site where construction was going on. Despite being refused by her, he committed sexual intercourse with her there saying that he will marry her. He did not allow her to go back. On the basis of her statement, other offences were added against the Appellant. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him.
3. In support of its case, the prosecution examined as many as 10 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced

the Appellant as mentioned in first paragraph of this judgment.
Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that without there being sufficient evidence on record against the Appellant the Trial Court has wrongly convicted him. The prosecution has not been able to prove that on the date of incident the age of the prosecutrix was below 18 years. The Trial Court has relied upon the entries of dakhil-kharaj register, but the author of the said entries has not been examined. In the said register, name of mother of the prosecutrix is mentioned as Pushpa. Pushpa and Punni are names of one woman is also not established. On what basis the entries were made in the said register has also not been made clear. Thus, the entries of the dakhil-kharaj register cannot be accepted as a conclusive proof for age of the prosecutrix. From the statements of the prosecutrix and her mother, it seems that on the relevant date, the prosecutrix was more than 18 years of age. From the statement of the prosecutrix and her conduct, it is also established that she was a consent party. Thus, it is also established that no offence is made out and the Appellant has wrongly been convicted.
6. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. I shall first consider the evidence available on record with regard to age of the prosecutrix. There are two documentary evidence

available on record with regard to age of the prosecutrix. First documentary evidence is Progress Report (Article A-C) of the prosecutrix of 8th standard and the other documentary evidence is entries of dakhil-kharij register (Ex.P4). In both these documents, date of birth of the prosecutrix is mentioned as 25.9.1997. In both these documents, name of mother of the prosecutrix is mentioned as Smt. Pushpa. According to the case of the prosecution, Punni Sahu (PW4) is mother of the prosecutrix. Punni Sahu has nowhere stated in her Court statement that her another name is Pushpa. Instead, in paragraph 16 of her cross-examination, she has deposed that admission of the prosecutrix in the school was got done by some other person and that person had got recorded name of mother of the prosecutrix as Pushpa. This witness has not stated the name of that person who got the above entries recorded in the school. From the statement of Punni Sahu (PW4), it is clear that she herself had not got any entries recorded in the school.

9. Homnath Dewangan (PW2), the teacher, who had made entries in the dakhil-kharij register (Ex.P4), has stated that according to the entries made in the dakhil-kharij register, date of admission of the prosecution in the school is 30.6.2010. This witness has admitted that the entries which are made at the time of admission of a student in 6th standard of the school are based on the entries made in the transfer certificate. This witness has further admitted that on what basis date of birth of the prosecutrix was recorded in the primary school, he was not able to state because he was not posted at that time in the school. From the above, it is clear that though in the dakhil-kharij register and in the progress report of the

prosecutrix, her date of birth is mentioned as 25.9.1997, on what basis her said date of birth was recorded in those two documents and who made those entries in the said two documents and who got the said entries recorded therein have not been disclosed or established by the prosecution. There is a difference in the name of mother of the prosecutrix in both the said documents. In this regard also, no clinching evidence has been brought on record that Pushpa herself is Punni. Thus, the prosecution is not in a position to get any help of the said two documents and these two documents cannot be considered to be a conclusive evidence with regard to age of the prosecutrix.

10. The prosecutrix (PW3) has only been able to state date and year of her birth, but she has not been able to state the moth of her birth. Her mother Punni Sahu (PW4) has also not been able to state month and year of birth of the prosecutrix. She has only stated the date 25th October as date of birth of the prosecutrix. The prosecutrix has stated age of her younger sister to be 13 years. How much gap is there between her and her younger sister's age has not been stated by the prosecutrix herself nor by her mother Punni Sahu (PW4). According to the medical report also, the secondary sexual characters of the prosecutrix were found to be fully developed and as stated by Dr. Razia Khatun (PW1), menstruation of the prosecutrix had started at her age of 16 years, but, the doctor has not stated that before how many years of her examination, menstruation of the prosecutrix had started.
11. On a minute examination of the evidence available on record, it is established that what is the actual date, month and year of birth of

the prosecutrix, the prosecutrix and her mother have not been able to state anything in this regard. What is the gap between the age of the prosecutrix and her younger sister, has also not been stated by the prosecutrix and her mother. According to the medical report also, the secondary sexual characters of the prosecutrix were found to be fully developed. In these circumstances, on the date of incident, the prosecutrix was below 18 years of age is not established.

12. Now, I shall consider the conduct of the prosecutrix. According to the prosecution, the Appellant had forcibly made the prosecutrix sit in the auto and at that time, her friend Manju was also along with her. Manju has not been examined by the prosecution. According to the FIR, when the Appellant was taking the prosecutrix away with him, it was seen by Ramdulari. But, Ramdulari has also not been examined by the prosecution. Instead, Satwantinbai (PW6) has been examined by the prosecution. But, she has not supported the case of the prosecution and turned hostile. From the statements of the prosecutrix and her mother, it is also established that both were acquainted with the Appellant from before and the Appellant had also worked with the mother of the prosecutrix for about 1 month. At the time when the Appellant took the prosecutrix away in the auto, she was returning from her school. If she was being taken forcibly, she could have raised an alarm. But, she did not do so. According to the prosecutrix, she and the Appellant went to the bus stand from the said auto and, thereafter from the bus stand they went to Raipur by a bus and stayed at Raipur for 7 days. Thus, from the above also, it is clear that the prosecutrix had ample opportunity to come out of the

clutches of the Appellant, run away and disclose the incident on the way to others, but she did not do so. From the conduct of the prosecutrix, it seems that she was a consenting party. Her age was below 18 years at the time of incident is also not established. Thus, no offence is made out against the Appellant.

- 13.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 14.** 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