

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.620 of 2014

Judgment Reserved on : 30.7.2019

Judgment Delivered on : 23.10.2019

Sanjay Sarthi, S/o Shri Chhotelal Sarthi, aged about 21 years, R/o Mandipara, Ward No.5, Chandrapur, Police Station Chandrapur, Civil and Revenue District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Chandrapur, Civil and Revenue District Janjgir-Champa, Chhattisgarh

--- Respondent

For Appellant : Shri V.C. Ottalwar and Shri Ishwar Jaiswal, Advocates
For Respondent : Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 21.4.2014 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No.57 of 2013, 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 5 years and fine of Rs.10,000/- with default stipulation
Under Section 366A of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.10,000/- with default stipulation
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.20,000/- with default stipulation
Under Section 506 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.5,000/- with default stipulation

2. Facts of the case, in brief, are that on 9.1.2013, the prosecutrix (PW1), a girl aged about 13 years, had gone along with her friends Manorama (PW8), Monika (PW11), Rama, Preeti and Chandani (not examined) towards the pond of Hirapur to collect wood. At about 1:00 p.m., the prosecutrix was collecting the wood. At that time, the Appellant came there, forcibly caught her hands and dragged her towards a nearby situated dilapidated house where he after threatening her committed forcible sexual intercourse with her. He threatened her that if she tells about the incident to anyone, he will also commit rape with her elder sister. Therefore, she did not tell about the incident to anyone. 2 days prior to lodging of the First Information Report (Ex.P1), the Appellant asked her to marry him threatening that otherwise he will again commit rape with her. Then the prosecutrix told about the incident to her mother and other persons. Thereafter, on 21.1.2013, she lodged the FIR (Ex.P1). She was medically examined by Dr. Rajni Patel (PW12). Her report is Ex.P3. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. During the course of investigation, with regard to age of the prosecutrix, dakhil-kharij register (Ex.P13) was seized. In the said register, date of birth of the prosecutrix is mentioned as 25.12.2001. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Sections 363, 366A, 376(1) and 506 of the Indian Penal Code.
3. In support of its case, the prosecution examined as many as 14 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded

innocence. No witness has been examined in defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Appellant has been falsely implicated in the case. Without there being any clinching evidence against the Appellant, the Trial Court has wrongly convicted him. FIR was lodged after 12 days of the alleged incident. Delay has not been properly explained. The entire prosecution story is suspicious. No injury was found on private or any other part of the body of the prosecutrix. There is also no evidence on record on the basis of which it could be established that age of the prosecutrix was below 18 years.
6. Learned Counsel appearing for the State/Respondent 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. With regard to age of the prosecutrix, I first examine the evidence available on record. While recording her deposition, the apparent age of the prosecutrix has been recorded by the Trial Court as 13 years. During her cross-examination, though suggestion was put to her that her age was 18 years, she denied the suggestion.
9. Noorjahan (PW2), mother of the prosecutrix has also stated that at the time of incident, age of the prosecutrix was 13 years. On this

point, she remained firm during her cross-examination. With regard to documentary evidence regarding age of the prosecutrix, dakhil-kharij register (Ex.P13) was seized from possession of Ayesha Begum (PW9), Incharge Headmistress of Government Primary Girls School, Chandrapur. This witness has stated that as per the entries of dakhil-kharij register, date of birth of the prosecutrix is 25.12.2001. Though she has admitted that the said entries were not made by her, there is nothing on record on the basis of which it could be said that the said entries are incorrect.

10. Dr. Rajni Patel (PW12), who examined the prosecutrix has also stated the age of the prosecutrix to be about 13 years. She has also stated that at the time of examination, the prosecutrix herself had told that her age was 13 years and, therefore, she recorded her age as 13 years. From the entire evidence available on record, it is well established that at the time of incident, age of the prosecutrix was certainly below 18 years. Thus, the finding of the Trial Court in this regard is in accordance with the evidence available on record.

11. With regard to the incident, the prosecutrix (PW1), in her Court statement, has stated that on the date of incident, she had gone along with her friends Manorama, Rama, Preeti and Chandani towards the pond of Hirapur for collecting wood. At that time, this witness and Chandani had climbed over a tree, Preeti was collecting wood. Manorama and Rama, having seen a snake, started shouting. On this, this witness, after getting down from the tree, started to run away. At that time, the Appellant came there from behind, gagged her mouth and took her to a dilapidated

house situated nearby and committed forcible sexual intercourse with her inside the said house. When she tried to shout, he forcefully gagged her mouth. Thereafter, he threatened her that if she tells about the incident to anyone, he will commit rape with her elder sister also. 2 days thereafter, the prosecutrix told about the incident to her mother and thereafter she lodged the FIR.

- 12.** Noorjahan (PW2), mother of the prosecutrix, has deposed that when she was working in a mill, her son came to her and told that her daughter (the prosecutrix) was going to police station. Then she went to the police station where on being asked from the prosecutrix she told her that the Appellant had committed rape with her and he had also threatened her that if she tells about the incident to anyone, he will commit rape with her elder sister also.
- 13.** Ku. Najma (PW7), elder sister of the prosecutrix, has also stated that the prosecutrix had told her that when she had gone to the forest to collect wood, the Appellant had forcefully taken her to a dilapidated house in the forest and committed forcible sexual intercourse with her there. This witness has also stated that on the same day, they had gone to the police station and lodged the FIR.
- 14.** Manorama (PW8) and Monika (PW11) have not supported the case of the prosecution. Dr. Rajni Patel (PW12) examined the prosecutrix on 21.1.2013. She has deposed that on examination of the prosecutrix, she found that there was no visible injury present over private part or over any other part of the body of the prosecutrix. One finger was easily inserting into the vagina of the prosecutrix and her hymen was old ruptured. She found the prosecutrix to be able to perform sexual intercourse, but she has

opined that she could not give any definite opinion regarding recent sexual intercourse with the prosecutrix.

15. Inspector C.S. Sharma (PW14) is the witness who investigated the offence in question.

16. On a minute examination of the evidence available on record, it is clear that though Manorama (PW8) and Monika (PW11) have not supported the case of the prosecution, in her Court statement the prosecutrix (PW1) has categorically stated that on the date of incident she was subjected to forcible sexual intercourse by the Appellant in a dilapidated house. She was also threatened by him. This witness has remained firm during her cross-examination. After the incident, she had also narrated the incident to her mother Noorjahan (PW2) and her elder sister Najma (PW7). There is nothing on record on the basis of which it could be said that the prosecutrix, her mother and sister and the Appellant were at inimical terms. Therefore, there is no basis to believe that the prosecutrix has falsely implicated the Appellant. Though there are some contradictions in the statements of the above witnesses, they are not material. With regard to lodging of the FIR after 12 days of the incident, I find that the delay has been sufficiently and properly explained by the prosecutrix. From the evidence on record, it has already been established that on the date of incident, the prosecutrix was below 18 years of age. Therefore, considering the entire evidence available on record, I find that the Trial Court has rightly convicted the Appellant under Sections 363, 366A, 376(1) and 506 of the Indian Penal Code. Hence, the conviction of the Appellant is affirmed.

- 17.** As regards sentence part, considering the facts and circumstances of the case, for the offence under Section 376(1) of the Indian Penal Code, I reduce the Appellant's rigorous imprisonment of 10 years to 7 years, but affirm the fine sentence of Rs.20,000/-. For the other offences under Sections 363, 366A and 506 of the Indian Penal Code, I affirm the jail and fine sentences imposed upon him by the Trial Court. All the sentences are directed to run concurrently. The order of the Trial Court regarding payment of the amount of fine to the prosecutrix is affirmed.
- 18.** Consequently, the appeal is allowed in part to the extent indicated above.
- 19.** 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