

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 660 of 2014**

- Kirtanlal S/o Sobhram Kuroti (Gond), Aged About 25 Years, Occupation Agriculture, R/o Village Kulhardoh, Police Station Mohlla, Distt. Rajnandgaon C.G., Chhattisgarh

**---- Appellant****Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Mohlla, Distt. Rajnandgaon C.G. , Chhattisgarh

**---- Respondent**


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For Appellant : Shri Vivek Shrivastava, Advocate.

For Respondent/State: Shri Rahul Tamaskar, Panel Lawyer.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Judgment on Board**

**09/01/2019**

1. This appeal has been preferred against judgment dated 16-01-2014 passed in Special Sessions Trial No.2/2013 by the Additional Session Judge (FTC) Rajnandgaon, C.G. convicting the appellant under Section 450, 376 of the IPC and Section 4 of the Langik Aparadho Se Balko Ka Sanrakshan Adhiniyam, 2012 (Protection of Children from Sexual Offences Act, 2012)(in short 'the POCSO Act') sentencing him with R.I. for 10 years, R.I. for 10 years and R.I. for 10 years along with fine Rs.1000/-, Rs.1000/- and Rs.1000/- with default stipulation and direction that all the jail sentences shall run concurrently.
2. The prosecution case, in brief, is this, that about 5 months prior to 25-01-2013 when the prosecutrix (PW-1) was alone in her house the appellant committed house-trespass and then forcibly raped her. The prosecutrix was of aged about 13 years on the date of incident.

Because of the incident the prosecutrix became pregnant, hence, she gave a written complaint on 25-01-2013 and on that basis the FIR (Ex.-P/12) was lodged. In the investigation the prosecutrix was examined, statement of the witnesses were recorded and on completion of the investigation the charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Sections 450, 376 of the IPC and Section 4 of the POCSO Act, to which he denied and prayed for trial.
4. After 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. After completion of the trial, the impugned judgment has been passed wherein the appellant has been convicted and sentenced as aforementioned.
6. Learned counsel for the appellant submits that the appellant has been erroneously convicted by the trial Court without there being any reliable and trustworthy evidence against him. The prosecution has clearly failed to prove that age of the prosecutrix (PW-1) was 13 years on the date of incident on account of the admission made by Kotwar Jhaduram (PW-10), according to his statement the age of the prosecutrix on the date of incident would have been 16 years. Hence, there are contradictory statements regarding age of the prosecutrix, therefore, it should have been disbelieved and held that the prosecutrix was above 18 years. Apart from that, because of

delay in lodging the FIR it is clear that the prosecutrix was a consenting party, but consequent to her pregnancy she has falsely implicated the appellant. Therefore, it is prayed that the appeal may be allowed and the appellant may be acquitted.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this regard and submits that the prosecution has proved its case beyond reasonable doubt. The age of the prosecutrix (PW-1) is rightly held between 15 to 16 years and on that basis it cannot be held that on the date of incident her age was above 18 years, hence, in such a case any consent given by the prosecutrix (PW-1) is of no consequence. Hence, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-1) has stated that on the date of incident, she was alone in her house when the appellant came and by disrobing her he had sexual intercourse with her. She has stated that the appellant committed this act without her willingness and then had also threatened her to not to disclose about this incident. She has stated that she became pregnant, hence, she filed a written complaint (Ex.-P/1) with delay for the reason that she was frightened because of the threat given by the appellant. In her cross-examination her statement has remained unrebutted on this point that the appellant entered into her house and then had physical relation with her without her willingness. She has denied all the adverse suggestions given by the defence counsel and thus her

statement has remained unshaken.

10. Rajesh Kumar (PW-2) is father of the prosecutrix, he has stated that when he saw that his daughter has become pregnant then he and his wife enquired about it, on which, the prosecutrix (PW-1) disclosed about the incident of rape that was committed by the appellant. He has also stated that on the date of incident the age of the prosecutrix was between 13 to 14 years. In cross-examination his statement has remained unrebutted and he has denied the suggestion of defence that age of the prosecutrix was 18 to 20 years.
11. Durpati Bai (PW-3) is mother of the prosecutrix (PW-1), who has given statement similar to the statement given by Rajesh Kumar (PW-2) and it has also remained unshaken in her cross-examination.
12. Dharamuram (PW-4) has stated that a meeting was called by father of the prosecutrix (PW-1) in which the prosecutrix (PW-1) narrated about the incident that had taken place. He has also stated that in the same meeting the appellant admitted before the persons present that he had committed rape twice with the prosecutrix (PW-1). His statement has not been specifically challenged in his cross-examination. Kumar Uike (PW-5) and Ishwar (PW-7) have similarly stated and their statements have also remained unrebutted in their cross-examination.
13. Dr. Ananya Shrivastava (PW-9) has examined the prosecutrix (PW-1) on 28-01-2013 vide Ex.-P/6 and reported that her age was about 13 years and she has stated that she reported pregnancy of the

prosecutrix in her report on the basis of sonography report (Ex.-P/7) in which it was found that the prosecutrix was carrying pregnancy of 32 weeks and 5 days. Her opinion regarding pregnancy of the prosecutrix (PW-1) has remained unchallenged in her cross-examination. Although she has not given any specific and definite opinion in her report, but the fact of pregnancy itself determines that the prosecutrix had sexual intercourse and as alleged the person doing sexual intercourse is this appellant.

14. Kotwar Jhaduram (PW-10) has stated that according to the Kotwari Register, the date of birth of the prosecutrix (PW-1) is 04-08-1997, according to which it can be made out that age of the prosecutrix on the date of incident was more than 15 years, but less than 16 years.
15. The appellant has not taken any defence to deny the incident of physical relation with the prosecutrix (PW-1) and according to the statement given by the prosecutrix (PW-1) it is found proved that the appellant and the prosecutrix (PW-1) both had physical relation. The prosecutrix (PW-1) did not consent for the same is not the question in this case as the age of the prosecutrix (PW-1) was not more than 16 years on the date of incident, hence, in such a case even if the prosecutrix has consented for the sexual intercourse, then the act of the appellant amounts to offence of rape.
16. After closely scrutinizing all the evidence present in the record and considering on the submissions made by both the parties, I am of this opinion that conviction of the appellant in the offences as aforesaid is supported with the evidence of prosecution beyond reasonable doubt, which needs no interference.

17. At this stage, learned counsel for the appellant submits that the appellant is in jail since about 6 years, there is glimpse of love affair according to the evidence brought before the Court, therefore, the appellant may be given some relief by way of some reduction of the sentence of imprisonment imposed upon him.
18. After considering on all the facts and circumstances of this case, I am of this view that sentencing the appellant for minimum sentence prescribed for offence under Section 376 of the IPC and Section 4 of the POCSO Act would serve the purpose. Similarly, there is no minimum punishment prescribed for the offence under Section 450 of the IPC. Hence, this appeal is allowed in part. Conviction of the appellant in the offences as aforementioned are maintained, whereas, the sentence imposed upon him for the said offences is modified and the appellant is now punished with rigorous imprisonment for 7 years for each of the offences under Section 450, 376 of the IPC and Section 4 of the POCSO Act with a direction to run these sentences of imprisonment concurrently along with fine of Rs.1000/- for each offence. In case the fine is not paid, then the appellant shall have to undergo further R.I. for 2 months for each default.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
Judge