

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1555 of 2015

Judgment Reserved on : 5.7.2019

Judgment Delivered on : 30.9.2019

Sanjay Ram, S/o Ramvrish, aged about 22 years, R/o Village Neemgaon,
Dongatoli, P.S. Jashpur, District Jashpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police of Police Station
Jashpur, District Jashpur, Chhattisgarh

--- Respondent

For Appellant : Shri Sanjeev Sahu, Advocate
For Respondent/State : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 23.11.2015 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Act') and Additional Sessions Judge (FTC), Jashpur in Sessions Trial No.52 of 2015, whereby the Appellant has been convicted under Section 376 of the Indian Penal Code and Section 4 of the Act and sentenced under Section 4 of the Act with rigorous imprisonment for 7 years and fine of Rs.2,000/- with default stipulation.
2. Facts of the case, in brief, are that on the relevant date, age of the prosecutrix (PW5) was about 14 years. Allegedly, on 5.3.2015 at about 7:00 p.m, near Anganbadi School, the Appellant committed forcible sexual intercourse with the prosecutrix. On being

searched by father of the prosecutrix, namely, Vijay Ram (PW7), the prosecutrix was found along with the Appellant. Vijay Ram (PW7) took the prosecutrix with him. On reaching home, the prosecutrix disclosed the incident to her parents. Report of the incident was not lodged due to fear of public defamation. It was further alleged that on 15.3.2015 in the evening, Vijay Ram (PW7) again saw that the Appellant was taking the prosecutrix towards the school. Having seen Vijay Ram (PW7), the Appellant left the prosecutrix there and fled. Vijay Ram (PW7) went to the house of the Appellant. On this, the Appellant committed *marpeet* with Vijay Ram (PW7). This was told by Vijay Ram (PW7) to the villagers. Thereafter, First Information Report (Ex.P12) was lodged by Vijay Ram (PW7). The prosecutrix (PW5) was medically examined by Dr. Manju Minz (PW1). Her report is Ex.P1. Regarding age of the prosecutrix, Dakhil-Khari register (Ex.P4) was seized from Headmistress Anukampa (PW2). According to Ex.P4, date of birth of the prosecutrix is 1.7.2001. The Appellant was also medically examined by Dr. Lav Pandey (PW3). His report is Ex.P6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Sections 376 and 323 of the Indian Penal Code and Section 4 of the Act.

3. In support of its case, the prosecution examined as many as 12 witnesses. In his 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 acquitted the Appellant of the charge under Section 323 of the Indian Penal Code, but convicted and sentenced him as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Trial Court has failed to appreciate that the date of incident was 5.3.2015, but the FIR was lodged on 16.3.2015. Delay in lodging the FIR has not been properly explained. From the statement of the prosecutrix (PW5), it seems that she was a consenting party to the act done with her by the Appellant. At the time of incident, age of the prosecutrix was below 18 years is not established. Ignoring these facts, the Trial Court has wrongly convicted the Appellant. Ossification test has not been conducted to determine age of the prosecutrix. The prosecutrix has admitted the fact that there was a land dispute between both the families. Therefore, there is possibility of false implication of the Appellant.
6. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence. She submitted that from the evidence on record, it is well established that on the date of incident, the prosecutrix was aged about 14 years. From the statement of the prosecutrix, it is also well established that the Appellant committed a forcible sexual intercourse with her. Therefore, the Trial Court has rightly convicted the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW5) has deposed before the Court that on the

date of incident, i.e., 5.3.2015 at about 7:00 p.m., when she came out of her house, at that time, the Appellant came there and gagging her mouth with his hands, took her towards the Anganbadi School and committed rape with her there. At that time, her father reached there. On this, the Appellant leaving her there, ran away. It has been further deposed by her that after reaching home, she narrated the incident to her parents.

9. Vimlabai (PW6), mother of the prosecutrix, has supported the above statement of the prosecutrix and has stated that in the evening of the date of incident when the prosecutrix was not present at home, father of the prosecutrix went out of home to search the prosecutrix. He saw that the Appellant was committing rape with the prosecutrix near the Anganbadi School. He took the prosecutrix back to home. On reaching home, the prosecutrix told that the Appellant gagging her mouth had taken her away and committed sexual intercourse with her. Vimlabai has further deposed that on that date they did not tell about the incident to anyone due to fear of defamation in the village.
10. Vijay Ram (PW7), father of the prosecutrix, has also deposed in similar fashion. He has categorically stated that on 5.3.2015, searching for the prosecutrix, he went towards the Anganbadi School. There he saw the prosecutrix with the Appellant. He took her back to home. On reaching home, she told that the Appellant had forcefully taken her towards the Anganbadi School and committed wrong with her there.
11. The prosecutrix (PW5), her father Vijay Ram (PW7) and her mother Vimlabai (PW6) have also deposed that on 15.5.2015 at

about 3:00 p.m., the Appellant was taking the prosecutrix towards the Anganbadi School. At that time, father of the prosecutrix met with the prosecutrix and the Appellant. He took the prosecutrix back to home and went to the house of the Appellant for making a complaint. On this, a dispute took place between the father of the prosecutrix and the Appellant there.

- 12.** Vishwanath (PW10) has also stated that he had gone to the house of the Appellant along with Vijay Ram (PW7), father of the prosecutrix. At that time, the Appellant and his family members had done a dispute with the father of the prosecutrix.
- 13.** Dr. Manju Minz (PW1), who examined the prosecutrix on 16.3.2015, has stated that at the time of examination, the prosecutrix was highly tensed. On touching her vagina, she was complaining of pain. Redness was present in the internal wall of the vagina. Hymen was ruptured. As opined by the doctor, sexual intercourse was done with the prosecutrix.
- 14.** Dr. Lav Pandey (PW3) examined the Appellant. His report is Ex.P6. He found the Appellant to be capable of performing sexual intercourse. However, this witness has admitted the fact that there was no injury over the penis of the Appellant.
- 15.** With regard to age of the prosecutrix, as stated by Headmistress Anukampa (PW2), vide Ex.P3, police had seized the Dakhil-Kharij register (Ex.P4) of the school, according to which, date of birth of the prosecutrix is 1.7.2001. This witness has admitted that she was unable to state about what was got entered about date of birth of the prosecutrix in the Dakhil-Kharij register at the time of

admission of the prosecutrix in the school in Class 1 and who was the person who got the date of birth recorded in the said register. On the basis of admission made by this witness, it was the argument of Learned Counsel for the Appellant that since no ossification test of the prosecutrix was conducted by the prosecution and Headmistress Anukampa (PW2) has not been able to state about the person who got the entry of date of birth of the prosecutrix recorded and what was got recorded regarding date of birth of the prosecutrix, only on the basis of the said entry of the Dakhil-Kharij register (Ex.P4) age of the prosecutrix was below 18 years is not established. But, for the reason stated henceforth, this argument is not sustainable because Dr. Manju Minz (PW1), who medically examined the prosecutrix, in her report (Ex.P1), has mentioned the age of the prosecutrix as 14 years. If she had any doubt regarding age of the prosecutrix while making her report (Ex.P1), she would have recommended for ossification test of the prosecutrix. But, she has not done so. Apart from this, both Vimlabai (PW6), mother of the prosecutrix and Vijay Ram (PW7), father of the prosecutrix, in their Court statements, have categorically stated age of the prosecutrix to be 14 years. The above statement of Vimlabai (PW6) and Vijay Ram (PW7) has not been rebutted during their cross-examination. Thus, from the above also, it is well established that on the date of incident age of the prosecutrix was about 14 years.

- 16.** It was also argued by Learned Counsel appearing for the Appellant that the prosecutrix was a consenting party. But, from the statement of the prosecutrix, it is established that the incident of commission of sexual intercourse with her by the Appellant on

5.3.2015 was done by gagging her mouth. From the medical report (Ex.P1) also, it is established that sexual intercourse was done with the prosecutrix and redness was also found in the internal wall of her vagina during her medical examination. There is also no material on record to show that there was any prior acquaintance of the prosecutrix and the Appellant or there was a prior meeting between them or they had ever visited each other prior to the date of incident or they had ever lived together. Thus, it is not at all established that she was a consenting party to the act done with her by the Appellant. From the evidence on record, I find that the offence alleged against the Appellant is made out and the Trial Court has rightly convicted him. The sentence imposed upon him is also just and proper.

17. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
18. 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