

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 783 of 2009

1. Lalit Tandi, S/o Tilochan Tandi, aged about 43 years
2. Tirath, W/o Lalit Tandi, aged about 30 years
3. Rasna Sona, W/o Bhimraj Sona, aged about 25 years

All resident of Jhopadpatta, near Nala Sector – 5/17, Bhilai Nagar, P.S. -
Bhilai Nagar, Tahsil & District Durg (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through : Police Station Bhilai Nagar, District -
Durg(C.G.)

---- Respondent/State

For Appellants	:	Shri Shashank Thakur, Advocate
For Respondent/State	:	Shri Rahul Jha, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.10.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 30.09.2009 passed by 11th Additional Sessions Judge (F.T.C.), Durg (C.G.) in Sessions Case No. 17/2009, whereby the Appellants stand convicted and sentenced as under:-

<u>Appellant No.1 Lalit Tandi :</u>		
<u>Conviction</u>		<u>Sentence</u>
Under Section 366 alongwith Section 363 of Indian Penal Code (in short 'IPC')		R.I. for seven years and pay a fine of Rs.5,000/-, in default of payment to undergo R.I. for one year
Under Section 376 of IPC		R.I. for ten years and pay a fine of Rs.5,000/-, in default of payment to undergo R.I. for one year
All the sentences to run concurrently		

<u>Appellant No. 2 Tirath & Appellant No. 3 Rasna Sona :</u>	
<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of IPC	R.I. for four years and pay a fine of Rs.3,000/- each, in default of payment to undergo R.I. for one year each

3. In this case, the prosecutrix (PW-1) aged about 16 years and appellant No. 1 Lalit Tandi, aged about 43 years, who are the resident of Sector-5, Road No. 17, Bhilainagar, are neighbours and both of them are well known to each other. Appellant No.2 Tirath and appellant No.3 Rasna Sona are the wife and sister-in-law of Appellant No.1.
4. The prosecution case in brief is that on 21.10.2008 F.I.R. (Ex.-D/1) was lodged by prosecutrix (PW-1) against all the appellants in Police Station Bhilai Nagar, Durg which was registered under Section 363, 366, 376 read with Section 34 of IPC under Crime No. 285/2008. The allegations against the appellants are that on the date of incident i.e. 14.10.2008 appellant No. 2 Tirath and appellant No.3 Rasna Sona told the prosecutrix (PW-1) that if she went to Raipur with appellant No.1 Lalit Tandi, he would get her (PW-1) work in film. On same day at about 06:00 pm, appellants No. 2 & 3 after so enticing the prosecutrix took her away from the lawful guardianship of her parents to Sector-4, Boriya Market, where appellant No.1 came by scooter. From where, Lalit took the prosecutrix to Raipur by scooter on the pretext of getting her work in film. Thereafter, appellant Lalit left the scooter in Raipur and from Raipur he took the prosecutrix to village Mohra, Orissa by bus where Lalit kept the prosecutrix in the house of his relative. In the night appellant No.1 Lalit committed sexual intercourse with the prosecutrix against her will. They stayed for two days at village Mohra, Orissa. On 17.10.2008, appellant Lalit brought the prosecutrix to Raipur from Orissa and

they stayed at Meera Nagar in house of first wife of Lalit. On 18.10.2008, her father, uncle Pareshwar, Rupo, Vishwakarma and Devanand came to Raipur in search of her, at that time Lalit was not in the house. Thereafter, they brought the prosecutrix from Raipur to Sector-5, Bhilai and the prosecutrix narrated the incident to them. On the next day i.e. 19.10.2008, the father of the prosecutrix went to Raipur and Kota to inform his relatives regarding the prosecutrix being found and came back in the evening of 20.10.2008. Therefore, the report (Ex.-D/1) was lodged by the prosecutrix on 21.10.2008 against all the above accused/appellants.

5. Prosecutrix (PW-1) was sent for medical examination to Government Hospital, Supela on 22.10.2008 vide Ex.-P/11. PW-8 Dr. Shamli Rai examined the prosecutrix and gave her report Ex.-P/8 in which she opined that the prosecutrix was aged about 15-16 years, advised for X-ray for confirmation of age and there was no external injury present over the body of the prosecutrix but she opined that she was habitual to sexual intercourse and no definite opinion can be given regarding recent intercourse. Doctor also prepared two slides from vaginal swab for chemical examination of the same.
6. During investigation, underwear of the prosecutrix was seized vide seizure memo Ex.-P/2. Spot map (Ex.-P/10) was prepared by PW-9 Navi Monika Pandey, Inspector vide Ex.-P/10. *Nazri-naksha* (Ex.-P/3) was prepared by Patwari Nand Kumar Chaturvedi (PW-7). Photocopy of Admission & Discharge Register (Ex.-P/4C) was seized through Ex.-P/6. Mark Sheet of Class-VI A (Ex.-P/17) of the prosecutrix was seized through Ex.-P/16. Statements of the witnesses i.e. father & mother of the prosecutrix and the prosecutrix herself were recorded by the Police vide Ex.-P/19, Ex.-P/20 and Ex.-D/2.
7. Accused/appellant No. 1 Lalit Tandi was arrested on 22.11.2008 vide arrest

memo Ex.-P/22 and was sent for medical examination to Government Hospital, Supela vide Ex.-P/21. PW-6 Dr. A. Gopinath examined appellant-Lalit and gave his report Ex.-P/7. Appellants No. 2 & 3 were arrested on 22.11.2008 vide arrest memos Ex.-P/24 & Ex.-P/25.

8. Seized articles were sent to Forensic Science Laboratory, Raipur from where report (Ex.-P/29) was received. As per Ex.-P/29, human spermatozoa was found on Article 'B1' & 'B2' (vaginal slides of the prosecutrix). After medical examination, prosecutrix was sent for X-ray examination for determination of her age. Ossification test of the prosecutrix was conducted by PW-5 Dr. A.K. Sahu who gave his report (Ex.-P/4). Dr. A.K. Sahu opined that the age of the prosecutrix (PW-1) was approximate 15 to 16 years.
9. After completion of investigation charge-sheet was filed by the police against the appellants/accused for the offence under Sections 363, 366 read with Section 34 and 376 of IPC. While framing the charge, 11th Additional Sessions Judge (F.T.C.), Durg framed the charges against appellant No.1 Lalit Tandi under Section 363, 366 & 376 of IPC and charge against appellant No.2 Tirath & appellant No.3 Rasna Sona under Section 363 read with Section 34 of IPC which were denied by them and they prayed for trial.
10. So as to hold the accused/appellants guilty, the prosecution examined 09 witnesses i.e. PW-1 Prosecutrix, PW-2 father of the prosecutrix, PW-3 S.J. Shailey, PW-4 mother of the prosecutrix, PW-5 Dr. A.K. Sahu, PW-6 Dr. A. Gopinath, PW-7 Nand Kumar Chaturvedi, PW-8 Dr. Shyamli Rai and PW-9 Navi Monika Pandey in support of its case. Statements of the accused/appellants were also recorded under Section 313 Cr.P.C. in which they denied the charges levelled against them, pleaded their innocence and false implication in the case. No defence witness has been examined by the accused persons.
11. After appreciation of the evidence available on record, the 11th Additional

Sessions Judge (F.T.C.), Durg by the impugned judgment, convicted and sentenced the accused/appellants as mentioned in para-2 of this judgment, hence this appeal.

12. Learned counsel for the appellants submits that no offence has been committed by appellant No.1 Lalit Tandi, he has been falsely implicated in this case and no any independent witness supported the prosecution case. He also submits that as per the case of prosecution, age of the prosecutrix was 16 years, 08 month & 06 days and therefore, she attained the age of exercising her discretion. He further submits that on 18.10.2008, the prosecutrix was brought by her father and relatives to Bhilai from Raipur, then the prosecutrix told them that appellant Lalit has committed sexual intercourse against her own will, whereas the report has been lodged on 21.10.2008 i.e. after two days and this inordinate delay has not been properly explained by the prosecution. He submits that the prosecutrix was a consenting party to the act of the accused/appellant Lalit Tandi as she had physical relations with him at the place where they stayed and did not disclose the same to anyone. Hence, appellant Lalit Tandi cannot be convicted under Sections 363, 366 & 376 of IPC. He further submits that appellant Lalit Tandi has been released from jail after completion of his entire sentence awarded to him by the trial Court.

13. So far as conviction under Section 363 of IPC of appellant No.2 Tirath and appellant No.3 Rasna Sona is concerned, learned counsel for the appellants submits that both the appellants had not played any role in kidnapping of the prosecutrix or her being taken away from the lawful guardianship of her parents. Therefore, the trial Court has wrongly convicted and sentenced appellants No. 2 & 3 under Section 363 of IPC. Lastly, learned counsel for the appellants submits that if this Court finally comes to the conclusion that appellant No.2 Tirath and appellant No.3 Rasna Sona have rightly been

convicted by the trial Court for offence under Section 363 of IPC, considering the fact that they are the first offenders aged about 30 & 25 years at the time of incident, the incident took place around 12 years ago and they remained in jail for about seven months, they may be given the benefit of Probation of Offender Act and sentenced to the period already undergone by them. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478.**

14. On the other hand, learned counsel for the State supporting the impugned judgment submits that the prosecutrix was 16 years, 08 months & 06 days at the time of incident and as such, she was below 18 years of age as held by the trial Court and there is no illegality or infirmity in said findings arrived at by the trial Court. The prosecutrix was taken away from the lawful guardianship of her parents on the enticement by appellants No. 2 & 3 that if she went to Raipur with appellant No.1 Lalit Tandi, he would get her (PW-1) work in film. Thereafter, appellant Lalit Tandi took the prosecutrix to Orissa via Raipur and committed sexual intercourse against her will, therefore, the trial Court has rightly convicted and sentenced all the appellants for the above offences which needs no interference by this Court.

15. Heard learned counsel for the parties and also perused the records of the trial Court.

16. First, this Court shall examine whether on the date of incident, the age of the prosecutrix (PW-1) was below 18 years?

17. As per Ex.-P/4C, a photocopy of Admission & Discharge Register, in which the name of the prosecutrix (PW-1) and her father's name are recorded at Serial No. 13355, the date of birth of the prosecutrix is 08.02.1992 and that fact is also mentioned in Ex.-P/5, a certificate given by PW-3 S.J. Shailey, Principal, BSP Girls Higher Secondary School, Sector 5, Bhilai. Admission &

Discharge Register was seized vide Ex.-P/6 and it has been duly proved by PW-3 and there is no dispute regarding seizure of the same.

18. PW-2, father of the prosecutrix, has stated in his deposition that mark-sheet (Ex.-P/17) of the prosecutrix was submitted by him in police station and seizure of which was prepared by the police vide Ex.-P/16. PW-2 admitted that his marriage was solemnized in the year 1991 and the prosecutrix is his eldest daughter. As per Ex.-P/17, the date of birth of prosecutrix was also mentioned as 08.02.1992.

19. As per ossification test (Ex.-P/4) conducted by PW-5 Dr. A.K. Sahu, the prosecutrix was found to be aged in between 15-16 years. Ex.-P/4 has been duly proved by PW-5. PW-8 Dr. Shyamli Rai examined the prosecutrix (PW-1) and gave her report (Ex.-P/8) and opined that the prosecutrix was about 15-16 years of age.

20. Therefore, considering the entire evidence of PW-3 S.J. Shailey, PW-2 father of the prosecutrix, PW-5 Dr. A.K. Sahu & PW-8 Dr. Shyamli Rai who have duly proved Ex.-P/4, Ex.-P/8, Ex.-P/16 & Ex.-P/17 respectively regarding the age of the prosecutrix (PW-1), the trial Court has rightly given the finding that on the date of incident the prosecutrix was 16 years, 08 months & 06 days and below 18 years of age.

21. PW-1 Prosecutrix has stated in her deposition that on 14.10.2008 in the evening when she was in her home, appellants No.2 & 3 called her in front of their home and told her that if she went to Raipur with appellant No.1 Lalit Tandi, he would get her (PW-1) work in film. Both appellants 2 & 3 (Tirath and Rasna Sona) took her to Sector-4 Bhilai Boriya Market, where appellant No.1 was standing with scooter and took her on the scooter to the home of his friend at Raipur and parked the scooter. From Raipur, appellant No.1 took the prosecutrix to Village Mohra, Balangir District, Orissa where the appellant No.1 kept her in his relative's house for two day and during this

period, at the first night, he committed sexual intercourse with her. PW-1 has further stated in para-10 that appellant No.1 committed sexual intercourse with her against her will. Looking to the age of the prosecutrix (PW-1) i.e. below 18 years proved by the prosecution, she was allured on the pretext of getting her work in the film by appellant No.1 who was aged about 43 years at the time of incident and firstly the prosecutrix was taken by appellants No. 2 & 3 to Sector-4 Boriya Market and from where appellant No.1 took her to Orissa and where appellant No.1 committed sexual intercourse with her against her will. Further, it has not come in the evidence of prosecutrix that she was having affair with appellant No.1. As per FSL report (Ex.-P/29), human spermatozoa was found on Article 'B1' & 'B2' (vaginal slides of the prosecutrix). PW-6 – Dr. A Gopinath examined appellant No.1 and gave his report (Ex.-P/7). PW-6 has stated in his deposition that accused/appellant No.1 is capable to perform sexual intercourse and has duly proved Ex.-P/7.

22. PW-2, father of the prosecutrix, has stated that on 14.08.2008 at about 08.00 pm he came to his house, his wife told him that their daughter was not in the house, and she went away somewhere without informing her. Thereafter, they were searching for her daughter. On the next day, PW-2 went to Raipur to his relative's house for searching his daughter. PW-2 has further stated that on 18.08.2008 at about 10:00 pm he found the prosecutrix in the house of his relative and on the same day he brought the prosecutrix to Bhilai from Raipur. PW-2 asked the prosecutrix about her missing, then the prosecutrix narrated the incident. PW-2 has also stated that from 19.10.2008 and 20.10.2008, he informed their relatives that she (prosecutrix) was found and on 21.10.2008 he along with his daughter, wife and relatives went to Police Station Bhilai for lodging the report.

23. PW-4, mother of the prosecutrix, has supported the version of PW-2 father of the prosecutrix. PW-4 has stated that the prosecutrix was brought on

18.10.2008 from Raipur to Bhilai by her husband (PW-2) and on the next day i.e. 19.10.2008, the prosecutrix told her (PW-4) that appellant Lalit Tandi has committed sexual intercourse with her and after two days, they lodged the report.

24. So far as delay in lodging the F.I.R. is concerned, in ***Satyapal vs. State of Haryana, AIR 2009 SC 2190***, it was observed in para-20 of its judgment by the Supreme Court as under :

“20. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon. Both the courts below apart from relying on a part of the testimony of the prosecutrix found the evidence of PW-5 to be absolutely reliable. The medical evidence itself being a part of the evidence is required to be appreciated in the context of ocular evidence and other circumstances surrounding thereto.”

25. In the present case, prosecutrix has stated in para-43 that she informed about the incident of commission of rape against her by appellant Lalit for first time to her father and maternal uncle on 18.10.2008 when she was brought from Raipur to Bhilai. Thereafter, her father went to Raipur, Kota to inform his relatives that the prosecutrix was found and on 21.10.2008 the report was lodged in Police Station Bhilai Nagar vide Ex.-D/1 against all the appellants. Normally, in a case like rape or outraging of modesty of an unmarried girl or woman, report is lodged after discussing the matter in the family. It is much more so in the village or locality because it involves the prestige and reputation of the family of the victim. Delay in lodging the F.I.R. in a case of this nature is a normal phenomenon. Therefore, in the facts and circumstances of the case, considering the reasons offered by the prosecution for delay in lodging the FIR, this Court is of the opinion that the

delay occurred in reporting the matter to the police is not at all fatal to the prosecution case and the appellants cannot derive any benefit of it.

26. In *State of Rajasthan Vs. N.K. (Accused), 2000 CRI.L.J. 2205*, it has been observed by a three-Judges Bench of the Supreme Court that prosecutrix just crossing 16 years of age, consent on her part could not be inferred. Absence of injuries on person of the prosecutrix not necessarily evidence of consent on part of the prosecutrix.

27. Looking to the evidence of prosecutrix (PW-1), it appears that after being allured by the appellants on the pretext of getting her work in the film, firstly appellants No. 2 & 3 took the prosecutrix from the lawful guardianship of her parents to Sector-4 Bhilai Boriya Market, where appellant No.1 was standing with scooter and took her to Raipur and from Raipur, appellant No.1 took her to Village Mohra, Balangir District, Orissa where he kept her in his relative's house for two day and during this period, at the first night, he committed sexual intercourse with her against her own will. No evidence has been adduced, and even no suggestion has been given during the cross-examination of the prosecutrix as to why she would falsely implicate appellant No.1 Lalit Tandi on the false charge of rape and kidnapping/abducting with the help of appellants No. 2 & 3 (Tirath & Rasna Sona). Therefore, the testimony of prosecutrix (PW-1) inspires confidence of the court and her evidence appears to be absolutely trustworthy, unblemished and is of sterling quality. Her solitary evidence is sufficient to hold the appellants guilty of commission of offence of rape, kidnapping and abducting the prosecutrix. Thus, the conviction of appellant No. 1 Lalit Tandi under Sections 363, 366 & 376 IPC awarded by the trial Court is affirmed and likewise, the conviction of appellants No. 2 & 3 (Tirath & Rasna Sona) under Section 363 of IPC is also affirmed.

28. It is stated that appellant No. Lalit Tandi has been released from the jail after

completion of his entire sentence awarded to him by the trial Court and appellant No. 2 - Tirath and appellant No. 3 - Rasna Sona are on bail since 2009.

29. So far as the quantum of sentence of appellants No. 2 & 3 (Tirath & Rasna Sona) is concerned, considering the facts and circumstances of the case, the incident took place around 12 years back and the fact that at the relevant time offence under Section 363 of IPC was punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, further the age of the appellants 30 & 25 years at the time of incident, the fact that there is no criminal antecedents of the appellants, they have already remained in jail for about seven months and are on bail since 2009 as also that the appeal is pending since 2009, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of *George Pon Paul* (supra) wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending them back to jail at this stage and ends of justice would be served if the appellants are sentenced to the period already suffered by them while maintaining the fine amount each as awarded by the trial Court with default stipulation.

30. In the result, the appeal is allowed in part. Conviction of appellant No.1 – Lalit Tandi under Sections 366 alongwith 363 and 376 of IPC and sentence awarded thereunder by the trial Court are hereby affirmed. A report has been received from Office of Jail Superintendent, Central Jail, Durg (C.G.) dated 09.10.2020. about the status of the accused/appellant No. 1- Lalit Tandi. It is stated in that report that the accused/appellant-Lalit Tandi, S/o Tilochan Tandi, has been released from the jail on 13.08.2016 after completion of his entire sentence awarded to him by the trial Court, therefore, no further order

regarding his arrest/surrender etc. is required to be passed.

However, while maintaining the conviction of the appellants No. 2 & 3 (Tirath and Rasna Sona) each under Section 363 of IPC, they are sentenced to the period already undergone by them. The fine amount imposed on them with default sentence each by the trial Court shall remain intact. The appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge

vatti