

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2405 of 2000****Judgment Reserved on 09/12/2019****Judgment delivered on 06/03/2020**

Anil Kumar Singh S/o Ransai, aged about 20 years Occupation agriculture R/o Village Rampur PS Patna, District Korea (M.P.) (Now CG)

--- Appellant**Versus**

State of Madhya Pradesh through PS Patna, District Korea (Now Chhattisgarh)

---- Respondent

For Appellant	:	Mr. Brijesh Singh, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 31/08/2000 passed in Sessions Trial No. 386/1999 by the Additional Sessions Judge, Baikunthpur District Korea (M.P.) (Now C.G.), whereby the Appellant has been convicted under Sections 376 (1) and 366 of the Indian Penal Code and sentenced to undergo RI for 5 years with fine of Rs. 200 and RI for 3 years with fine of Rs. 200/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix (PW1) was below 16 years at the relevant time. On 05/09/1999, the Prosecutrix lodged an FIR Ex.P-1 alleging therein that before 7-8 months prior to lodging the FIR, she firstly came in contact with the Appellant. Thereafter, frequently they used to meet with each other. The Appellant, on the false pretext of marriage,

committed sexual intercourse with her on various occasions. On 03/02/1999 at about 7:00 pm, the Appellant called her and taken her towards field. There also he committed sexual intercourse with her. After two days on 05/03/1999, she without informing her parents had gone to the Appellant and after returning from there, she narrated the entire incident to her family. Thereafter, she lodged the report. The Prosecutrix was medically examined by Dr. Smt. Kalavati Patel (PW12). Her report is Ex.P-11A. Statement of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. During course of investigation, a photocopy of the mark-sheet of the Prosecutrix Article-A-1 collected. After completion of investigation, a charge-sheet was filed before the trial Court. Trial Court framed the charges. As many as 16 witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial has convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Appellant has been falsely implicated without there being any clinching evidence available on record. It has been further submitted that the statement of the Prosecutrix clearly indicates that she was the consenting party in the alleged act. The trial Court has also arrived to the conclusion that the Prosecutrix was the consenting party in the alleged act, but inspite of this the trial Court has convicted the Appellant only on the ground that the Prosecutrix was aged below 16 years. The finding of the said Court in

this regard is not in accordance with the evidence available on record. Though in the mark-sheet (Article-A-1) the date of birth of the Prosecutrix has been mentioned as 01/07/1984, no Dakhil Kharij register was collected by the Prosecution. On what basis and who made the entries regarding the date of birth of the Prosecutrix in school, is also not clear. Moreover, father and mother of the Prosecutrix are also not able to state the exact date of birth of the Prosecutrix. The Prosecutrix has admitted the fact that her elder sister is 20 years older than her and her elder brother is aged about 21 years. She also admitted that she is having menses for 8-9 years, thus from her statement it is apparent that she was aged more than 18 years at the time of incident. Apart from this, Dr. Smt. Kalavati Patel (PW12) had advised for ossification test of the Prosecutrix to determine the age of the Prosecutrix, but the Prosecution did not do so. Therefore, in these circumstances it is not established beyond all reasonable doubt that at the relevant time, the Prosecutrix was below 18 years of age. He prayed that the Appellant is entitled to get acquittal.

5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. In her court statement, the Prosecutrix (PW1) deposed that prior to 2-3 months before from the date of incident, she was having relationship with the Appellant and on many times, the Appellant had committed sexual intercourse with her. She further deposed that on the date of incident also, the Appellant called her and taken her on scooter near Nala. There also he

committed sexual intercourse with her. When she returned to her house, she narrated the entire incident to her parents. This witness has categorically admitted that there was love relation between them. In these circumstances and on the basis of admission made by the prosecutrix herself, the trial Court has arrived to the conclusion that the Prosecutrix was the consenting party in the alleged act. Thus, the finding of the trial Court in this regard is in accordance with the statement of the prosecutrix. With regard to the age of the Prosecutrix, in her court statement the prosecutrix has deposed that she is aged about 15 years. In para 7 of her cross-examination, she also admitted that her elder sister is 20 years older than her and her sister is having two children. She further admitted that her elder brother is aged about 21 years. In para 8 of her cross-examination, she admitted that she is having menses for 8-9 years. Durgavati (PW2), mother of the Prosecutrix and Lallu Yadav (PW3), father of the Prosecutrix have deposed that the age of the Prosecutrix is about 15 years and she got birth in the year 1984. According to the mark-sheet Article-A-1, the date of birth of the Prosecutrix has been mentioned as 01/07/1984, but in this regard Lallu Yadav (PW3) has admitted the fact that he had registered the date of birth of the Prosecutrix in school on presumption. Both the witnesses are not able to state the exact date of birth of the Prosecutrix. Even, they are also not able to tell their exact date of births. Apart from this, from the statement of Dr. Smt. Kalavati Patel, it is also established that she had advised for ossification test for determining the age of the Prosecutrix, but inspite of that the Prosecution did not do so.

8. On minute examination of above evidence, it makes clear that the Prosecutrix was the consenting party in the alleged act. There is no

conclusive evidence available on record on the basis of which it can be said that the Prosecutrix was below 18 years of age at the time of incident, therefore, looking to the evidence available on record the finding of the trial Court is not in accordance with the evidence available on record and the Appellant is entitled to get benefit of doubt.

9. Consequently, the appeal is allowed. The judgment of conviction of the trial Court is set-aside. The Appellant is acquitted from the charged framed against him. His bail bond be discharged immediately.
10. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge