

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 665 of 2002

Reserved on : 24/01/2020

Delivered on : 19 /05/2020

- Ravi Kumar Yadav, S/o Bhagi Ram Yadav, aged about 18 years, R/o Village Amaseoni, Thana Pandari, District Raipur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh through the District Magistrate, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For State/Respondent	:	Shri Sushil Sahu, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. By the impugned judgment dated 17/06/2002 passed in S.T. No. 413/2001 by the Sessions Judge, Raipur, Chhattisgarh, Appellant has been convicted under Sections 363, 366 & 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 500/-; rigorous imprisonment for five years and fine of Rs. 500/- and rigorous imprisonment for seven years and fine of Rs. 500/- respectively with default stipulations. All jail sentences to be run concurrently.

2. Facts of the case, in brief are that at the relevant time, age of the prosecutrix was below sixteen years. According to the mark-sheet of the prosecutrix and the entries made in the Dakhil Karij Register, date of birth of the prosecutrix is 22.12.1985. On the date of the incident, prosecutrix (PW-1) alongwith her sister went for school at around 7:00 AM but on the way prosecutrix went to her friend Girja's house. It is alleged that from there appellant took the prosecutrix with him and went to his maternal aunt's house at Lakhenagar situated at Raipur. Thereafter, appellant took the prosecutrix to Bhilai and then Dongargarh. At night, they both stayed in one Ashram where appellant committed sexual intercourse with the prosecutrix. On the next day, appellant took back the prosecutrix to his aunt's house at Raipur. Meanwhile, a missing report of the prosecutrix has been lodged by the father of the prosecutrix. When prosecutrix returned Raipur, she narrated the entire story to her father. Thereafter, on 28/08/2001, F.I.R. vide Ex. P-4 has been lodged by the father of the prosecutrix namely Jhumuk Lal Sahu (PW-3). Prosecutrix was medically examined by Dr. N. Mukherjee (PW-8). Since, at the time of her medical examination, prosecutrix was going through her menstruation period, so, she was not medically examined by the Doctor. However, vide Ex. P-17, Doctor had advised for ossification test for determination of age of the prosecutrix. Statement of the prosecutrix and other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. After completion of the investigation, charge-sheet was filed against accused/appellant. Trial Court framed charges against appellant.

3. In support of its case, the prosecution examined as many as 8

witnesses. In examination under Section 313 of the Code of Criminal Procedure, the appellant denied the guilt and pleaded innocence. No defence witness has been examined.

4. After trial, the trial Court convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
5. Learned Counsel appearing on behalf of the appellant submitted that without there being any clinching evidence on record against the appellant, the trial Court has wrongly convicted him. She further submitted that from the statement of the prosecutrix and other evidence available on record, it is well-established that prosecutrix was a consenting party and she herself had left her house on her own will. Prosecutrix also visited various places and stayed one night in the Ashram at Dongargarh with the appellant with her own will. Thereafter, they both returned to Bhilai and then Raipur. During the said period, prosecutrix neither resisted, raised alarm nor made any complaint to anybody regarding anything. It is further submitted that according to the mark-sheet of the prosecutrix i.e. Ex. P-3 and entries made in the Dakhil Kharij Register, date of birth of the prosecutrix is 22.12.1985 but that is not the conclusive prove of her age because as per the statements of mother of the prosecutrix namely Devki (PW-2) and father of the prosecutrix namely Jhumuk Lal Sahu (PW-3), they both have admitted the fact that their marriage was solemnized in the year 1977 and their first child was born after four years of their marriage i.e. in the year 1981 and thereafter birth of the prosecutrix took place, meaning thereby, prosecutrix was born in the year 1983. Thus, at the time of incident, she was more than sixteen years, therefore, offence

under Section 376 of I.P.C. is not proved against appellant and with regard to other offences, from the evidence available on record, it is well-established that prosecutrix herself had left her house and went alongwith the appellant with her own will. There is nothing on record on the basis of which it can be said that appellant in any manner has allured the prosecutrix to go alongwith him. Appellant has also not done any act which induced the prosecutrix to go alongwith him. Therefore, offences under Section 363 and 366 of I.P.C. are also not proved.

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. I have thoroughly gone through the entire statement of prosecutrix (PW-1) and other prosecution witnesses. Prosecutrix (PW-1) in her Court statement has deposed that on the date of incident she left her house alongwith her sister for school and on the way, she stayed at her friend Girja's house. Thereafter, she went to school with Girja. There appellant met with the prosecutrix on the way. On being asked by the prosecutrix, appellant told her to go with him for capturing some photographs. Then, they both went to the house of the aunt of the appellant in Lakhenagar situated at Raipur and from there appellant took the prosecutrix to Bhilai and then Dongargarh. At Dongargarh, they both stayed in one Ashram. At night, appellant committed sexual intercourse with her. Prosecutrix further deposed that after committing sexual intercourse with her, appellant left her and went outside for

some time. On the next morning, appellant took the prosecutrix and came back to Bhilai and then Raipur in his aunt's house. Thereafter, aunt and mother of the appellant, they both took them to the police station. During cross-examination, in paragraph 3, prosecutrix has admitted the fact that when she left her house, she has taken two pairs of clothes with her. In paragraph 4, she further admitted the fact that after reaching near school, she told her friend Girja that she was going to Chhattisgarh Hospital to meet her friend i.e. appellant. Thereafter, she went to Bhilai and Dongargarh and stayed in one Ashram at Dongargarh with appellant. She also admitted that after the sexual intercourse with the appellant, she did not try to escape or make any complaint to anybody. In paragraph 7 of her Court statement, prosecutrix has further deposed that on the next day, they both came to Bhilai and they both slept in one garden and on next day, they came to Raipur.

9. From the entire admissions made by the prosecutrix, it is well-established that prosecutrix herself went to Chhattisgarh Hospital to meet the appellant. She herself went along with appellant to Raipur, Bhilai and Dongargarh and again came back to Bhilai and then Raipur together. Prosecutrix visited various place for 2-3 days with appellant and also stayed with appellant in one Ashram at Dongargarh. During that period, appellant committed sexual intercourse with the prosecutrix and thereafter, when she was left alone at that time also, she did not try to escape or make any complaint to anybody. On the next morning, they both came to Bhilai where they both stayed for one night in the garden and on the next day, both returned to Raipur. During the said period, prosecutrix was having ample of opportunities

to escape but she did not do so. From the above, it is well-established that prosecutrix was a consenting party. Prosecutrix also left her house with her own will and at that time she had taken her two pairs of clothes with her. Prosecutrix visited different places with appellant in 2-3 days. She also spent night with the appellant. There is also no such evidence available on record from which it can be said that Appellant has allured the prosecutrix in any manner to go with him. Appellant has also not done any act which induced the prosecutrix to go with him.

10. With regard to age of the prosecutrix, as per the mark-sheet (Ex.P-3) and the entries made in the Dakhil Kharij Register (Ex.P-10) her date of birth is 22.12.1985. Jhumuk Lal Sahu (PW-3), father of the prosecutrix, who is also a teacher, firstly stated that date of birth of her daughter is 22.12.86 but later on after seeing the mark-sheet of her daughter, he stated that her date of birth is 22.12.1985. Prosecutrix was admitted in the primary school by his father Jhumuk Lal (PW-3) and at that time on what basis entry of date of birth of the prosecutrix is made is not known and no such evidence is available on record regarding the same. The declaration which is being given at the time of admission in school is also not found in the evidence. Jhumuk Lal Sahu (PW-3) has admitted the fact that at the time of his marriage, his age was about 17-18 years and her wife Devki's (PW-2) age was about 15-16 years. He has further stated that his marriage was solemnized in the year 1977 and his first child was born after four years of marriage meaning thereby, in the year 1981. The gap between the age of his first child and prosecutrix was not properly explained or disclosed by father of the prosecutrix Jhumuk Lal (PW-3). Devki (PW-2), mother of the prosecutrix was also unable to explain the gap of

years of her daughters age. Dr. Smt. N. Mukherjee (PW-8), who medically examined the prosecutrix had advised for ossification test for determination of age of the prosecutrix but the same was not done by the prosecution. Thus, from the evidence available on record, it is not conclusively proved that at the time of incident, age of the prosecutrix was below 16 years.

11. On minute examination of the above evidence available on record, it is well-established that prosecutrix was the consenting party and if any alleged act of sexual intercourse was committed with her, that was done with her consent. There is also no conclusive evidence available on record which shows that at the time of incident prosecutrix was below 16 years of age. Thus, offence under Section 376 of I.P.C against appellant is not proved. From the statement of prosecutrix and materials available on record, it is also well-established that prosecutrix herself had done pre-planning and had left her house on her own will. Prosecutrix stayed 2-3 days with appellant and during that period she visited various places with appellant. Thus, it is not established that appellant has done any act of abduction or inducement with the prosecutrix. Therefore, Section 363 and 366 of I.P.C. are also not proved.
12. Consequently, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 363, 366 & 376 of the Indian Penal Code. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in light of Section 437-A of Cr.P.C

13. 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**

Prakash