

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1273 of 2000****Judgment Reserved on 04/12/2019****Judgment delivered on03/2020**

Ramadhar Yadav, Aged about 23 years, R/o Dev Rani Police Station Bhatapara
(Gramin) District, Raipur (M.P.)(Now Chhattisgarh)

--- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	:	Ms. Savita Tiwari, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel**CAV Judgment**

1. This appeal is directed against the judgment dated 03/08/1999 passed in Sessions Trial No. 438/1998 by the Second Additional Sessions Judge, Baloda Bazar, whereby the Appellant has been convicted under Sections 363 & 366 of the IPC and sentenced to undergo RI for 5 years with fine of Rs. 500/- and RI for 7 years with fine of Rs. 1000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix (PW8) was about 17 years at the relevant time. On 02/11/1998 at about 6:00 -7:00 pm, she had gone to attend the call of nature, but did not return. Thereafter, on 03/11/1998 a missing report of the Prosecutrix was lodged. On the same day i.e. 03/11/1998, the Prosecutrix was recovered in the night. It was

disclosed by the Prosecutrix that on 02/12/1998, the Appellant, on the pretext of marriage, had taken the Prosecutrix with him and committed sexual intercourse with her in the field. Later on, FIR has been lodged by the grand-father of the Prosecutrix vide Ex.P-13. The Prosecutrix was medically examined by the doctor. Her statement as well as statement of other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges under Sections 363, 366 and 376 of the IPC. As many as 12 prosecution 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 completion of trial, the trial Court has acquitted the Appellant from the charge framed under Section 376 of the IPC, however, the Appellant has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the trial Court has wrongly convicted the Appellant without there being any clinching evidence available on record. It has been further submitted that from the statement of the Prosecutrix as well as other witnesses, it is established that the Prosecutrix was the consenting party in the alleged act and on the same set of grounds, the trial Court has acquitted the Appellant from the charge framed under Section 376 of the IPC. It has been further submitted that there is no clinching evidence available on record on the basis of which, it can be said that at the time of incident the Prosecutrix

was below 18 years. She herself had left the house and visited various places with the Appellant, therefore, it is also established that she was the consenting party. Thus, the finding of the trial Court is not in accordance with the evidence available on record and the said Court has wrongly convicted the Appellant under the aforementioned sections.

5. Learned counsel appeared on behalf of the State opposed the same and supported the judgment of conviction passed by the trial Court. It has been further submitted that from the entries of Kotwari register, it is well established that at the time of incident, the Prosecutrix was aged about 17 years, thus, the trial Court has rightly convicted the Appellant for the alleged offence.
6. I have heard learned counsel for the parties and perused the record minutely.
7. In her Court statement, the Prosecutrix (PW8) has deposed that on the date of incident at about 7:00 pm when she had gone to attend the call of nature, the Appellant met her and took her with him at Village Chamari. He committed sexual intercourse with her. Thereafter, he had taken her to Bhatapara. When they were sitting at Railway station of Bhatapara, Dhanesh and Somnath, residents of their village, met them and brought them back to the village. During cross-examination this witness has admitted that at the time of commission of sexual intercourse, she had not opposed the Appellant or made any noise. She further admitted that while visiting Chamari from her village and thereafter from Chamari to Bhatapara, she had never made any noise or complained anyone. She further admitted that in the night stayed at Chamari, she met with the

people, but she never disclosed the matter to anyone. She further admitted that on the way to Bhatapara station also, there was police station, but she did not make any noise or made any complaint. Dhanesh (PW11) has also deposed that when he was going to Bhatapara Railway station, he saw the Appellant going with the Prosecutrix to the Railway station. Thereafter, he saw the Prosecutrix alone, thereafter the Appellant came there. He brought them back with him. Pusau (PW2), Kotwar is a witness from whom kotwari register Ex.P-6 has been seized. According to the entries made in the Kotwari register, the date of birth of the Prosecutrix has been mentioned as 02/11/1981. The entries were made by the father of the Prosecutrix namely Sevaram. According to kotwar register, the Prosecutrix was aged about 17 years.

8. On minute examination of above evidence, it makes clear that the Prosecutrix was the consenting party in the alleged act because from the statement of the Prosecutrix, it is well established that on the date of incident she had left her house in the evening time and she accompanied with the Appellant up to Bhatapara railway station. Initially, Dhanesh found her alone at the railway station and she did not say anything against the Appellant, thus, it is established she had gone with the Appellant on her own will. Though according to the entries of kotwari register, the age of the Prosecutrix was about 17 years, from the statement of the Prosecutrix and evidence available on record, it is established that the Prosecutrix herself had left her house on her own. There is no evidence available on record on the basis of which it can be said that the Appellant had allured the Prosecutrix or had taken her with him. In these circumstances, offence under Sections 363 and 366 of the IPC is not proved against the Appellant.

Thus, the finding of the trial Court is not in accordance with the evidence available on record and the said Court has wrongly convicted the Appellant under the aforementioned sections.

9. Consequently, the appeal is allowed. The judgment of conviction and sentenced passed by the trial Court is set-aside. The Appellant is acquitted from the charge 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

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 678 of 2020

Ramadhar Yadav, Aged about 23 years, R/o Dev Rani Police Station Bhatapara
(Gramin) District, Raipur (M.P.)(Now Chhattisgarh)

--- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Applicant	:	None
For Respondent	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

19/03/2020

1. This CRMP has been filed in office reference as there was inadvertent mistake of non-typing the date of delivery of judgment passed in CRA No. 1273/2000, which was uploaded on website through CIS on the correct date of delivery of judgment i.e. 04/03/2020. The mistake has been rectified by the concerned Section.
2. In view of above, it is ordered that in CRA No. 1273/2000, the date of delivery of judgment shall be read as 04/03/2020.

Sd/-

(Arvind Singh Chandel)
Judge