

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 25.02.2020

Delivered on 08.05.2020

**Criminal Appeal No. 312 of 2017**

Abdul Khan @ Monu, S/o. Ashraf Khan, Age 20 years, R/o.  
Village Sonarin Ghat Champa Police Station Champa Distt.  
Janjgir-Champa (CG)

---- Appellant

**Versus**

State of Chhattisgarh, through Station House Officer,  
Champa, Distt. Janjgir-Champa (CG)

---Respondent

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For the appellant : Ku. Durga Sarni, Advocate  
For the respondent/State : Smt. Smita Jha, Panel Lawyer

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**Hon'ble Shri Justice Ram Prasanna Sharma****CAV Judgment**

1. The appeal is directed against judgment dated 15.02.2017 passed by Additional Sessions Judge (FTC), Janjgir, Distt. Janjgir Champa, (CG) in Special Session Trial No.02/2016 wherein the said Court convicted appellant for commission of offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act 2012') and under Section 506 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.8000/- and RI for

02 years and to pay fine of 2000/- respectively with default stipulation.

2. In the present case prosecutrix is PW-5. As per the version of the prosecution, the prosecutrix is minor and the appellant committed sexual intercourse with her on the promise of marriage and thereafter refused to marry her. Again the appellant threatened the prosecutrix and her parents to kill. The matter was reported, investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The prosecutrix was in love affair with the appellant and report was lodged because the appellant refused to marry her, therefore, it is not a case of sexual assault.

(ii) It is not a case of penetrating sexual assault as defined under Section 3 of the Act, 2012.

(iii) From the evidence, it is not proved that the victim was minor on the date of incident. Therefore, charge under Section 6 of the Act is not established.

(iv) Medical evidence is also not corroborative piece of evidence, therefore, finding of the trial Court is liable to be set aside.

(v) From the entire evidence, charge under section 506 is not established, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. In the present case FIR is Ex-P/7 in which name of the appellant is mentioned as culprit and his act of rape is also mentioned in the said report. Prosecutrix (PW-5) deposed before the trial Court that her date of birth is 14.11.2002 while date of incident is 14.02.2014. Ganesh Ram (PW-1) is father of the prosecutrix and as per the version of this witness, age of the prosecutrix is about 13 years and she is the student of Class-8. Dr. Madhusudan Sharma (PW-11) was posted as Registrar Birth and Death in Municipal Council , Champa in the year 2002. This witness brought birth register before the trial Court to prove that on information of father of the prosecutrix he recorded her date of birth as 14.11.2002. Version of this witness is unrebutted during

cross-examination. Birth and Death register has evidentiary value and the same is supported by version of father of the prosecutrix. There is absence of rebuttal of their evidence, it is further supported by the version of mother of the prosecutrix Jhat Kumari (PW-7). Date of birth of the prosecutrix is proved to be 14.11.2002 and the date of incident is 14.02.2014, hence, on the said date, prosecutrix was aged about 11 years and 03 months. From the evidence on record, age of the prosecutrix is proved to be 11 years and 02 months and she was a child as defined under Section 2(d) of the Act, 2012.

7. Prosecutrix (PW-5) deposed that the appellant on the promise of marriage forcefully committed rape on her and thereafter threatened to kill and subsequently denied to marry her. Version of this witness is supported by version of Ganesh Ram (PW-1), father of the prosecutrix and Jhat Kumari (PW-7) mother of the prosecutrix. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. There is nothing on record that prosecutrix has falsely implicated the appellant of ravishing her chastity by sacrificing and jeopardizing her future prospect. Version of the prosecutrix inspires confidence and no corroboration is required, and her version is supported by ample corroborative piece of evidence. Version of this witness is further supported by version

of Dr. ML Patel (PW-3) who examined the appellant and found him capable to do intercourse. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. After giving serious thought the matter was reported. There is some delay in lodging the report but case of sexual assault against woman cannot be equated with the case involving other offences. Case of the prosecution cannot be thrown out merely on the ground of delay in lodging the report.

8. On overall assessment, arguments advanced on behalf of the appellant is not sustainable. Age of the prosecutrix was below 12 years, therefore, act of the appellant falls within definition of Section 5 (m) of the Act, 2012 which is defined as penetrative sexual assault on a child below twelve years and the same is punishable under Section 6 of the said Act.

9. Again threatening to kill the minor prosecutrix when she was in custody of the appellant shows that he was determined to execute the threat on minor prosecutrix, therefore, his act falls within mischief under section 506 IPC.

10. After evaluating the entire evidence, this Court is of the opinion that finding recorded by the trial Court for the above two offences is not liable to be sustained and the same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded sentence of 10 years for offence under Section 6 of the Act, 2012 which is minimum and less than minimum cannot be awarded. Therefore, sentence part is not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant is in jail, therefore, no further order for his arrest etc. is required.

**Sd/-**

**(Ram Prasanna Sharma)**

**JUDGE**