

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1357 of 2015**

- Rakesh Kujur S/o Dharamsai Aged About 22 Years R/o Village Patthalgaon Khurd, P.S. Kaapu, District Raigarh Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Lundra, Civil And Revenue Distt. Raigarh Chhattisgarh.

---- Respondent

For Appellant	:-	Shri Brijesh Kumar Singh, Advocate
For Respondent-State	:-	Shri Avinash Choubey, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board**

By**Prashant Kumar Mishra, J.****27/01/2020**

1. The matter is posted today for hearing on I.A. No.01/2020, application under Section 389 of Cr.P.C. for suspension of sentence and grant of bail, however, the appellant being in jail since 02.11.2013, with the consent of learned counsel for the parties, the appeal is heard finally.

2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.06.2015 passed by the Additional Sessions Judge, FTC, Surguja (Ambikapur) in ST No.10/14 by which the learned Court below convicted the appellant for committing offences under Sections 363, 366, 376(2)(ढ) of the I.P.C. and Sections 3(क)/04, 5(ढ)/06 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo imprisonment for 05 years, 07 years, life imprisonment, life imprisonment and life imprisonment respectively and to pay fine of Rs.1000/- for each of the offence, in default on payment of fine to further undergo RI for one month for each offence. All the sentences are directed to run concurrently.
3. As per the prosecution case, as reflected from the FIR (Ex-P-23) lodged by Lalu Das, father of the prosecutrix, on 02.11.2013, his daughter, prosecutrix (PW-2) went missing from the afternoon of 14.10.2013 for which a missing report was lodged. During enquiry of the said report his daughter was recovered from the possession of the accused on 01.11.2013. She informed the Police that she was abducted by the accused and thereafter she was subjected to forcible sexual intercourse on promise to marry. In the medical report (Ex-P-12A), the prosecutrix was found to be habitual to sexual intercourse and had not sustained any external or internal injuries. Undergarments of the accused and the

prosecutrix as well, were recovered and vaginal slides and swabs were prepared. The FSL report (Ex-P-24) was positive for the underwear of the prosecutrix but not for other articles including the vaginal slides and swabs.

4. The accused was sent for trial for committing offences under Sections 363, 366, 376(2)(ढ) of the I.P.C. and Sections 3(क)/04, 5(ढ)/06 of the Protection of Children from Sexual Offences Act, 2012 on the ground that the prosecutrix was less than 18 years of age on the date of incident.
5. When examined in Court, the prosecutrix examined as PW-2, has not made any specific allegation about commission of rape. In her examination-in-chief she would state that the accused liked her and she also liked the accused. In cross-examination she denied that the accused used to commit rape on promise to marry. She also admits that she had gone with the accused on her own sweet will. Her mother, Pramila examined as PW-4 has not made any allegation in respect of abduction or commission of rape. She would not make any allegation for rape as well. In fact, she denies to have knowledge of any untoward incident happened with her daughter.
6. Informant Lalu Das (PW-1) is the father of the prosecutrix. He would state the date of birth of his daughter as 1.09.1997 which is a different date of birth than what is recorded in the

Dakhil Khareej Register (Ex-P-22A). In paragraph 8 and 9 of his statement, Lalu Das would state that at the time of his daughter's admission to Saraswati Shishu Mandir School she was aged about 05 years. At this school she was admitted in class 3 in the year 2005. Thus, statement of Lalu Das is contrary to the statement of PW-8 Nirmala Gupta who has stated that the prosecutrix was admitted in the Saraswati Shishu Mandir School in class 3. On the basis of the statement of PW-8 Nirmala Gupta, when she was admitted in Saraswati Shishu Mandir her age should have been at least 8-9 years and not 5 years as stated by PW-1 Lalu Das. While PW-8 Nirmala Gupta states that the date of birth in the Dakhil Kharij Register was entered on the basis of form filled by her parents whereas PW-1 Lalu Das has not stated that her date of birth mentioned in the Dakhil Kharij Register as 12.09.1997 was informed to the school by him. In fact, he is not even aware of date of birth of his daughter as mentioned in the Dakhil Kharij Register. The Investigating Officer has not recovered the Kotwari Register or the birth certificate of the prosecutrix. Thus, there is lack of conclusive evidence to prove that the prosecutrix was less than 18 years of age on the date of incident.

7. If the prosecutrix is not proved to be less than 18 years of age on the date of incident and as per her own statement she had gone with the accused of her own and was not

subjected to forcible sexual intercourse, in our considered view the prosecution has failed to prove the ingredients of the offences under Sections 363, 366, 376(2)(b) of the I.P.C. and Sections 3(b)/04, 5(b)/06 of the Protection of Children from Sexual Offences Act, 2012.

8. Considering the evidence on record, the trial Judge has wrongly convicted the appellant. The judgment of conviction, therefore, deserves to be and is hereby set-aside and he is acquitted of the said charges
9. The appellant is in jail since 02.11.2013. He be released forthwith if not required in any other case, on furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months as required under the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.
10. In view of the above, the present appeal is allowed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge