

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 120 of 2014**

Loknath Sahu, aged about 27 years S/o Basant, Occupation Farmer, R/o Village Kishungarh, Police Station Pandriya, District Kabirdham (C.G.)

----Appellant**Versus**

State of Chhattisgarh, Through SHO, P.S. Pandriya, District Kabirdham (Kawardha) (C.G.)

---- Respondent

For Appellant : Mr. Santosh Bharat, Advocate

For Respondent: Mr. P. Acharya, PL

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

05/03/2020

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 07/01/2014 passed in Sessions Trial No. 51/2013 by the Additional Sessions Judge (FTC) and Special Judge, POCSO, 2012 Kabirdham (Kawardha), whereby the Appellant has been convicted under Sections 450 and 376 (2)(1) of the IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo RI for 10 years with fine of Rs. 2000/-, RI for 10 years with fine of Rs. 2000/- and RI for 10 years with fine of Rs. 2000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix (PW6) was about 14 years at the relevant time. According to the entries of Dakhil Kharij register (Ex.P-10), the date of birth of the Prosecutrix is 13/08/1999. As per the prosecution case, on 17/09/2013 at about 1:00 pm when the

Prosecutrix was in her house along with her younger sisters, aged about 3 and 1 years respectively, one person entered into her house and committed forcible sexual intercourse with her. Thereafter, he fled away from the spot. At that time, the Prosecutrix did not know that person. After the incident, when her mother and father returned, the Prosecutrix narrated the incident to her mother. Thereafter, it was revealed that the assailant was Appellant Loknath. On 20/09/2013, FIR has been lodged vide Ex.P-12 by the Prosecutrix. The Prosecutrix was medically examined by Dr. Pooja Nahar (PW9). Her report is Ex.P-15. Statement of the Prosecutrix as well as other witnesses were also recorded. During course of investigation, it was found that co-accused Chameli Bai has incited the Appellant to commit the rape. After investigation, a charge-sheet has been filed against the Appellant as well as co-accused Chameli. The trial Court framed the charges. As many as 12 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has acquitted co-accused Chameli from all the charges, however, the Appellant has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that there is 3 days delay in lodging the FIR, which has not been explained. There is

material contradiction in the statement of the Prosecutrix, therefore, her statement is not duly reliable. From the evidence itself, it is not established beyond all reasonable doubt that at the relevant time, the Prosecutrix was below 18 years, therefore, the conviction of the Appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. First, I am examining the evidence available on record with regard to the age of the Prosecutrix.
8. In their court statement, Narendra Yadav (PW1), father and Sakina Bai (PW2), mother of the Prosecutrix has deposed that at the time of the incident, the age of the Prosecutrix was about 15-16 years. Their above statement is not duly rebutted during their cross-examination. According to the entries of Dakhil Kharij register (Ex.P-7), the date of birth of the Prosecutrix is mentioned as 13/08/1999. While recording the said entries in the Dakhil Kharij register, an application (Ex.P-11) was submitted by the father of the Prosecutrix, wherein also, the date of birth of the Prosecutrix is mentioned as 13/08/1999. Thus, from the evidence available i.e. oral and documentary, shows that at the relevant time, the age of the Prosecutrix was below 15 years.
9. With regard to the incident, the Prosecutrix (PW6) in her court statement has deposed that on the date of incident, she was in her house along

with her younger sisters. Her parents and brother were not present in the house. The Appellant came into her house and closed her mouth. He dragged her into a room and committed forcible sexual intercourse with her. As per this witness, at the time of incident, another boy was standing outside the house. After the incident, the Appellant shouted to that boy to open the door and thereafter they ran away from the spot. However, this witness is not able to tell the name of that boy. This witness has further deposed that after returning of her parents, she narrated the incident to her mother. This witness has further deposed that before this incident once co-accused Chameli Bai had told her to do bad work and offered some money, upon which she narrated this matter to her parents, therefore, after the incident of rape, co-accused Chameli was searched, but she was not found. On 20/09/2013, Chameli was found and she was taken to the police station. She further deposed that in the police station, the police has confronted four persons before her in which she identified the Appellant. During her cross-examination in para 10, this witness has admitted that she did not know the Appellant previously, but she has categorically stated that when the Appellant committed rape with her she recognized him. She did not know his name and when the police official told his name then he came to know the name of the Appellant. In para 13, she further deposed that the Appellant caught hold her and when she tried to rescue herself, she got injuries on her back and neck. In para 15 and 16 of her cross-examination, some suggestions were made by the counsel for the Appellant. According to those suggestions when the Appellant was performing intercourse with her, she did not refuse. It was also suggested that she used to talk with

the Appellant on mobile phone. Meaning thereby, it has been admitted by the defence that the alleged act has been done by the Appellant. From the statement of the Prosecutrix, it is clear that the Prosecutrix did not know the Appellant previously, therefore, there was no reason to believe that the intercourse was performed with her consent. Apart from this, from the statement of one Pooja Nahar (PW9), it is established that behind left hand and neck, there were abrasions. There were abrasions in her left breast also. Though, this witness has not opined the duration of the injuries, as stated by the Prosecutrix at the time of incident when she protested against the act of the Appellant, she got injuries in her neck and back. Thus, the medical report also corroborates the statement of the Prosecutrix.

10. On minute examination of the above evidence available on record, it makes clear that at the relevant time, the age of the Prosecutrix was below 15 years. From the statement of the Prosecutrix and suggestions made by the counsel for the Appellant, it is also established that the Appellant had committed sexual intercourse with her. Since, the Prosecutrix did not know the Appellant previously, therefore, there is no reason to believe that the intercourse was performed with her consent. Even otherwise, for the shake of argument, if it is admitted that there was consent, yet the age of the Prosecutrix was below 15 years, therefore, there is no meaning of consent.
11. Considering the above evidence available on record, the finding of the trial Court is in accordance with the evidence available on record and the said Court has rightly convicted the Appellant.

12. Consequently, I do not find any merit in this appeal and the same is dismissed.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul