

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1329 of 2014

Judgment Reserved on : 02/03/2020

Judgment Delivered on : 26 /05/2020

- Kapil Kumar Sahu S/o Seukram Sahu, aged about 23 Years R/o Village Kathiya, P.S. Bemetara, Civil and Revenue Distt. Bemetara, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, Through - Station House Officer, Police Station Bemetara, Distt. Bemetara, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Rajkumar Pali, Advocate.
For State/Respondent	:	Smt. Seema Dixit, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. The instant appeal has been preferred against the judgment dated 03.12.2014 passed by the Additional Sessions Judge, Bemetara, District – Bemetara, Chhattisgarh in Sessions Trial No. 52/2014, whereby the appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of I.P.C.	Rigorous imprisonment for 3 years and fine of Rs. 500/-
Under Section 366-A of I.P.C.	Rigorous imprisonment for 3 years and fine of Rs. 1,000/-

Under Section 376 of I.P.C.	Rigorous imprisonment for 10 years and fine of Rs. 1,000/-
Under Section 6 of POCSO Act, 2012	Rigorous imprisonment for 10 years and fine of Rs. 1,000/-
All sentences to be run concurrently.	

2. According to the case of the prosecution, age of the prosecutrix (PW-10) at the relevant time was about 16 years. According to the entries made in the *Dakhil Karij* Register Ex.P-8, date of birth of the prosecutrix is 12.04.1998. On the date of the incident i.e. 27.01.2014, prosecutrix left her house to go school but she did not return home. On 28.01.2014, it came to know from village girls namely Madhu Sahu (PW-1) and Ku. Manisha Sahu that appellant had taken the prosecutrix on his motorcycle towards Bemetara. Thereafter, on 28.01.2014, Tarachand Sahu (PW-14) father of the prosecutrix lodged F.I.R. vide Ex.P-19. During course of investigation, on 30.03.2014 prosecutrix recovered from the possession of the appellant vide Ex.P-3. Statement of prosecutrix was recorded. Prosecutrix was medically examined by Dr. Rajshree Devdhar (PW-5). Her report is Ex.P-10. During course of investigation, vide seizure memo Ex.P-7 *Dakhil Kharij* Register Ex.P-8 was seized from Sharad Kumar Bhuwal (PW-3), Incharge Principal, Government Higher Secondary School, Kathiya, District – Bemetara where the prosecutrix was studying. Statements of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. After completion of the investigation, charge-sheet filed against accused/appellant. Trial Court framed charges against appellant. In support of its case, the prosecution examined as many as

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

3. After trial, the trial Court convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. 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. He further submitted that from the statement of the prosecutrix, it is well-established that prosecutrix was a consenting party and she herself had left her house on her own will. Prosecutrix visited and stayed at various places with appellant. It is further submitted that though according to the entries made in the *Dakhil Kharij* Register, date of birth of prosecutrix is 12.04.1998 but on what basis the entries were made in the *Dakhil Kharij* Register is not disclosed by the prosecution. Father and mother of the prosecutrix were also not able to state the date of birth of their daughter (prosecutrix). Dr. Rajshree Devdhar (PW-5) had also advised for ossification test for determination of age of the prosecutrix, inspite of that no ossification test was conducted by the prosecution. Therefore, looking to the entire evidence available on record, it is not established that at the time of incident, age of the prosecutrix was below 18 years. Since prosecutrix was a consenting party and was a major girl, no offence is proved against appellant.
5. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.

6. I have heard learned Counsel appearing for the parties and perused the record with due care.
7. Firstly, I have examined the conduct of prosecutrix in this case. Prosecutrix (PW-10) has deposed that on the date of incident, she left her house to go school for examination but she went alongwith appellant in a motorcycle to Bhilai. Prosecutrix in her statement has further deposed that her parents used to commit marpeet with her, therefore, she herself told the appellant to take her alongwith him. She stayed in a rented room with appellant for 15 days in Bhilai. She further deposed that from Bhilai, she alongwith appellant and one Bhanu, friend of appellant went to Banaras. At Banaras also, they all stayed in one rented room for one and half months. Appellant used to do the work of cleaning cloth knitting machine at Banaras. There, they were living like husband and wife and they also developed physical relationship. She further deposed that later on police personnel came to Banaras and brought them back to Bemetara police station. From the entire statement adduced by the prosecutrix, it is well-established that prosecutrix was a consenting party in the alleged act committed by appellant. Prosecutrix herself left her house and went alongwith appellant on her own will. There is nothing on record on the basis of which it can be said that appellant has allured or induce the prosecutrix in any manner to go alongwith him.
8. With regard to the age of the prosecutrix (PW-10), according to the prosecution, date of birth of the prosecutrix is 12.04.1998. Sharad Kumar Bhuwal (PW-3), Incharge Principal, Government Higher Secondary School, Kathiya has deposed that as per *Dakhil Kharij*

Register Ex.P-8, date of birth of prosecutrix is 12.04.1998. He has admitted the fact that entry of the date of birth of the prosecutrix was made in the *Dakhil Kharij* Register when prosecutrix was admitted in class 9 and the said entry was made on the basis of the entry made in the previous school record. Initially, at the first time of admission of prosecutrix in school, when and by whom the entry of date of birth of prosecutrix was being made, there is no evidence available on record in this regard. In F.I.R. Ex.P-19, Tarachand Sahu (PW-14), father of the prosecutrix has mentioned that he got entered the date of birth of her daughter in the Kotwar Register but no such Kotwar Register has been seized by the police. Smt. Yashoda Sahu (PW-13), mother of the prosecutrix has also deposed that she did not know the actual date of birth of the prosecutrix. Even, she was not able to state her own date of birth too. Tarachand Sahu (PW-14), father of prosecutrix in his Court statement has also not stated the date of birth of her daughter. Dr. Rajshree Devdhar (PW-5) while examining the prosecutrix had advised for ossification test for determination of age of the prosecutrix but the said test was not conducted by the prosecution for the reasons best known to them.

9. On minute examination of the above evidence available on record, it is well-established that there is no such evidence which shows that on the date of incident prosecutrix was below 18 years of age. From the statement of the prosecutrix, it is well-established that prosecutrix was the consenting party in the alleged act and she herself had left her house on her own will. Thus, in my considered view, offences under Sections 363, 366-A, 376 of the Indian Penal Code and Section 6 of POCSO Act, 2012 are not duly proved against appellant and the

findings of the trial Court available on record is not in accordance with law.

10. 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-A, 376 of the Indian Penal Code and Section 6 of POCSO Act, 2012. The appellant is reported that he is in jail. He be released forthwith if not required in any other case.
11. 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**