

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1124 of 2014****Judgment Reserved on 18/11/2019****Judgment delivered on 15/01/2020**

Deepak Sahu S/o Kumar Sahu, aged about 22 years, R/o Bakhtavar Chal, Tulsipur, Rajnandgaon, Permanent R/o Village- Rampur, Post Jangalpur, Thana Lalbag, Revenue/Civil Distt. Rajnandgaon (C.G.).

--- Appellant**Versus**

State of Chhattisgarh through Police Station Kotwali, Distt. Rajnandgaon (C.G.)

---- Respondent

For Appellant	:	Mr. Samir Singh, Advocate
For Respondent	:	Mr. Amit Kumar Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 07/11/2014 passed in Special Case No. 03/2013 by the Special Judge, Distt. Rajnandgaon (C.G.), whereby the Appellant has been convicted under Sections 363, 366 and 376 of the Indian Penal Code and sentenced to undergo RI for 3 years with fine of Rs. 1000/-, RI for 5 years with fine of Rs. 1000/- and RI for 10 years with fine of Rs. 1000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix (PW1) was about 16 years 5 months and she was studying in class-12th at the relevant time. On 16/10/2012, a missing report of Prosecutrix was lodged by her father, Vinod (PW2) stating therein that the Prosecutrix was missing from 15/10/2012.

On 20/10/2012, the Prosecutrix was recovered from the possession of the Appellant vide Ex.P-18 and her statement was recorded. She disclosed the fact that on 14/10/2012, the Appellant met her and had taken her to the house of his friend, Yashwant where the Appellant had committed sexual intercourse with her. On the next day i.e. on 15/10/2012, when she was returning from her friends house, the Appellant met her on the way and took her to the house of Yashwant, where he, on the false pretext of marriage, committed sexual intercourse with her. She also deposed that the Appellant continuously committed sexual intercourse with her on every day till 19/10/2012. On 20/10/2012, she made a call to her friend Mamta and intimated her that she is residing with the Appellant. Mamta informed the same to her family members and then she was recovered. Statement of other witnesses under Section 161 of the Cr.P.C has been recorded. With regard to age of the Prosecutrix, Dakhil Kharij register Ex.P-14-A, Mark-sheet Ex.P-14-B and Birth Certificate Ex.P-17-A were collected. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 21 witnesses. No defence witness has 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.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in the first paragraph 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

evidence available on record. He further submits that if the entire story of the prosecution is taken as it is, yet it seems that the Prosecutrix was the consenting party. There is no evidence available on record on the basis of which it can be established that the age of the Prosecutrix was below 18 years at the relevant time. He further submits that since she was the consenting party, therefore, no offence is made out against the Appellant.

5. Learned counsel appearing on behalf of the State opposes the same and supported the impugned judgment.
6. I have heard learned counsel for the parties and perused the record minutely.
7. With regard to the age of the Prosecutrix, three documents have been seized which are Dakhil Kharij register (Ex.P-14-A), Mark-sheet (Ex.P-14-B) and Birth Certificate (Ex.P-17-A). According to these documents, the date of birth of the Prosecutrix is 28/05/1996.
8. In their Court statements, the Prosecutrix (PW1) and her father Vinod (PW2) have categorically stated that the date of birth of the Prosecutrix is 28/05/1996. Vinod (PW2) has deposed that the Prosecutrix is her elder daughter who born on 28/05/1996 and his second child born on 10/02/1999. He is also able to tell his date of birth tpp. As stated by him, his date of birth is 01/11/1970. He further deposed that within 1 year of birth of the Prosecutrix, he made entries regarding date of birth of the Prosecutrix. He also admitted that at the time of admission of the Prosecutrix in school, he had submitted declaration form and birth certificate regarding date of birth of the Prosecutrix. On this point, this

witness has remained firm during his cross-examination. From the entire evidence i.e. documentary and oral, it is well established that at the relevant time, the Prosecutrix was aged about 16 years 5 months.

9. With regard to the incident, the Prosecutrix (PW1) in her Court statement has stated that on 15/10/2012, when she was returning from her friend's house, the Appellant met her and had taken her with him. He first drove her to here and there and thereafter took her to the house of Yashwant. Thereafter, the Appellant and Yashwant had gone to somewhere and returned at about 9:00 pm. When, she insisted the Appellant to leave her at her house then the Appellant told her that he loves her and will marry with her. Thereafter, on the pressure of the Appellant, she made a call to her family members stating that she is staying at her friend house. In the night, the Appellant made physical relationship with her and made statement that he will marry with her. She further deposed that on the next day, the Appellant had taken her to Durg at Chandi Mandir. In presence of Yashwant, the Appellant filled vermilion on the forehead of the Prosecutrix and put Mangalsutra on her. She further deposed that they returned to the house of Yashwant. Thereafter, the Appellant left her there and went to his house. In the morning, he came there and after 1-2 hours, he had gone somewhere along with Yashwant. In the evening, he brought some fruits for her. On the next day morning, the Appellant had taken her to the house of Horilal, where they stayed for about 2-3 days. The Appellant also provided a mobile phone to her and told her that she may call him in emergency. She further deposed that on 20/10/2012, she made a phone call to her friend Mamta and called her to meet. She also told her to inform the matter to her parents. Later on, her parents came there and took her

with them. During cross-examination, this witness has admitted that on 14/10/2012, she firstly had gone to the house of Mamta and told her that she is going with her boy-friend i.e. Appellant. She further admitted that on 15/10/2012, she told to Mamta that she is going with her boy friend. She further admitted that from 15/10/2019 to 20/10/2019, she stayed with the Appellant and she was having mobile phone, but she never made a call to her parents. She further admitted that she never made a complaint to Yashwant as well as his family members to the effect that she has been forcibly brought or abducted. She further admitted that in the house of Horilal, the Appellant had gone somewhere leaving her, at that time also she did not make a complaint to anyone.

10. On minute examination of above evidence, it makes clear that there was love relationship between the Appellant and the Prosecutrix, due to which the Prosecutrix herself left her house and stayed at the house of Yashwant and thereafter in the rented house along with the Appellant. The Appellant also provided her a mobile phone. If she was forcibly abducted and was being forcibly kept without her consent, then she was having ample opportunities to inform or made complaint to parents and other persons, but she did not do so. Thus, it is well established that she was a consenting party to the alleged act and she herself had left her house and stayed with the Appellant.
11. It has been earlier discussed that at the relevant time, the age of the Prosecutrix was 16 years 5 months and from the statement of the Prosecutrix it is also established that she was the consenting party.
12. Section 375 of the IPC, which defines 'rape', has been substituted by the

Criminal Law (Amendment) Act, 2013 effected from 03/02/2013. According to this Amendment Act, consent part of the victim/prosecutrix relates to 18 years of her age. But, in the case in hand, the incident took place in the year 2012. Therefore, the old provision of Section 375 of the IPC shall apply to the instant case. Section 375 of the IPC runs thus:

“375. Rape.- A man is said to commit “rape” who except in the case hereinafter, excepted, has sexual intercourse with a women under circumstances falling under any of the six following descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by pulling her or any person in whom she is interested in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under Sixteen years of age.

13. In case in hand, the date of birth of the Prosecutrix is 28/05/1996 and the incident had happened on 15/10/2012. Therefore, on the date of incident, the Prosecutrix was aged about 16 years 5 months and as already held above in paragraph 10 of this judgment, she was a consenting party to the alleged act. Hence, the Appellant has been wrongly convicted under Section 376 of the IPC by the trial Court.

14. In the result, the appeal is partly allowed. The Appellant is acquitted from the charge framed under Sections 366 and 376 of the IPC. However, his conviction under Section 363 of the IPC is affirmed.
15. As per the judgment of the trial Court, the Appellant has been sentenced to undergo RI for 3 years under Section 363 of the IPC and presently he is in jail since more than 5 years, therefore, he be released forthwith, if not required in any other case.
16. 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