

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 49 of 2010**

Deepak Das Mahant S/o Kirtan Das Mahanat, aged about 26 years R/o Sanjay Nanagar Korba, P.S., Kotwali Korba, District Korba (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through the Police Station Kotwali Korba, District Korba (C.G.)

---- Respondent

For Appellant	:	Mr. Rishi Rahul Soni, Advocate
For Respondent	:	Mr. H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****15/02/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 24/12/2009 passed in Sessions Trial No. 58/2005 by the Sessions Judge, Korba, District Korba(C.G.), whereby the Appellant has been convicted under Section 376 (1) (2) (3) of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 500/- with default stipulation.
2. In this case, the age of the Prosecutrix was about 16 years at the time of the incident. Her mother Laxmin Bai (PW2) had lodged a missing report of her daughter on 17/04/2005. During course of inquiry, on 26/04/2005, the Prosecutrix was recovered from the possession of the appellant vide recovery memo Ex.P-4. Thereafter, FIR has been lodged by mother of the Prosecutrix. Statement of the Prosecutrix was recorded under Section 161 of the Cr.P.C. She was medically examined by Dr. Smt. S. Shrivastava (PW13). Her report is Ex.P-15. Statement of other

witnesses were also recorded. According to further case of the prosecution, the appellant on the pretext of marriage, took the Prosecutrix with him in the house of acquitted co-accused Alhaudeen and there he committed sexual intercourse with the Prosecutrix. After completion of investigation, a charge-sheet was filed against the appellant as well as acquitted co-accused Alhaudeen. As many as 15 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 Alhaudeen from all the charges framed against him. The appellant was also acquitted from the charge framed under Sections 363 and 366 of the IPC, however, he 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 trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence. He further submits that from the statement of the Prosecutrix and her mother, it is well established that the Prosecutrix was the consenting party. In her statement recorded under Section 161 of the Cr.P.C (Ex.D-1), the Prosecutrix has categorically admitted the fact that she herself had left her house and accompanied with the appellant for about 8-10 days. She also admitted that she had stayed with the appellant and visited various places. But ignoring these facts, the trial has wrongly convicted the appellant only on the basis of her Court

statement. He further submits that from the statement of Laxmin Bai (PW2), mother of the Prosecutrix, it is also established that at the time of recovery of the Prosecutrix, she was willing to live with the appellant and she had refused to go with her. This also shows that the Prosecutrix was the consenting party. According to counsel for the appellant, since the Prosecutrix was more than 16 years of age and she was the consenting party, therefore, the conviction of the appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statements of the Prosecutrix and witnesses minutely.
7. With regard to the age of the Prosecutrix, there is no dispute that the date of birth of the Prosecutrix was 03/02/1989 as per Dakhil Kharij Register (Ex.P-9) and Mark-sheet of Class-I (Ex.P-3) and on the date of incident i.e. on 16/04/2005, she was more than 16 years of age.
8. As per argument advanced by the counsel for the appellant, now I am examining the statement of the Prosecutrix as well as her mother, Laxmin Bai (PW2) and also examining the conduct of the Prosecutrix.
9. Though the Prosecutrix in her Court statement has stated that she was forcibly taken inside the house of acquitted co-accused and there for about 3 days, the appellant on various occasions committed forcibly sexual intercourse with her, in her statement recorded under Section 161

of the Cr.P.C (Ex.D-1) she has categorically admitted the fact that due to love relationship and on being asked by the appellant, she herself left her house and stayed with the appellant for about 10 days at various places. Thus, it is clear that there are material contradictions and omissions occurred in the statement of the prosecutrix. From the statement of Laxmin Bai (PW2), it is also apparent that when the Prosecutrix was recovered, at that time the Prosecutrix had refused to go with her mother and she was willing to live with the appellant. This also shows that the Prosecutrix herself was willing to live with the appellant and she was the consenting party, Therefore, in my considered view, the finding of the trial Court is not in accordance with the evidence available on record and the conviction of the appellant under the above mentioned section is not sustainable.

10. Consequently, the appeal is allowed. The appellant is acquitted from the charge framed against him under Section 376 (1) (2) (3) of the IPC. It is reported that the accused/appellant is in jail. He be released forthwith, if not required in any other case.
11. 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