

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 139 of 2014**

- Ludu @ Omprakash, S/o Jhadu Panika, Aged About 19 Years, R/o Village Kamthi, P.S. Kukdur, Distt. Kabirdham, (C.G.), Civil & Rev. Distt. Kabirdham (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh Through P.S. Kukdur, Korba Distt. Kabirdham, (C.G.).

---- Respondent

For Appellant : Shri Shikhar Sharma, Advocate.

For State/Respondent : Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****16/02/2021**

1. This appeal has been preferred against the impugned judgment dated 03/12/2013 passed in Special Case No.14/2013 by the Special Judge, Kabirdham (Kawardha) District – Kabirdham (C.G.) wherein appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
U/s 363 of the I.P.C.	R.I. for 5 years with fine of Rs.1,000/- with default stipulations.
U/s 366 of the I.P.C.	R.I. for 10 years with fine of Rs.1,000/-
U/s 376 of the I.P.C.	R.I. for 7 years with fine of

	Rs.1,000/-
U/s 3(1)(12) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.	R.I. for 3 years and fine of Rs.1,000/- with default stipulations.
All sentences to run concurrently.	

2. In the present case, at the relevant time age of the prosecutrix was about 15 years. She belongs to a member of scheduled caste. According to the case of prosecution, on 9/6/2013 at about 23:30 O'clock, appellant took the prosecutrix from her house by giving false assurance of marriage. It is further alleged that, thereafter, appellant committed sexual intercourse with the prosecutrix. On 10/6/2013, matter was reported vide Ex.P-14 by father of the prosecutrix Jairam Dhurve (PW-2). During investigation, prosecutrix was recovered from the possession of the appellant vide recovery memo Ex.P-1. Statement of the prosecutrix was recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 13 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded his innocence and false implication in the matter.
3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Durg, (C.G.) would mention that appellant has been released from

jail on 03/12/2020 after completion of his entire jail sentence imposed upon him by the trial Court.

5. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. There are material contradictions and omissions occurred in the statements of prosecutrix and other prosecution witnesses and the said fact has not been appreciated by the trial Court. Therefore, conviction of the appellant is not sustainable.
6. 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.
7. I have heard learned Counsel appearing for the parties, perused the materials available on record and statement of the prosecution witnesses.
8. From the statements of witnesses namely Jairam Dhruve (PW-2) father of the prosecutrix, Mayabai (PW-3), Deepak Kumar Yadav (PW-4), Prem Singh (PW-6) and from the perusal of Caste Certificate Article 'A' of the prosecutrix, it is well-established that prosecutrix belongs to 'gond' caste which false within scheduled caste. With regard to age of the prosecutrix, from the evidence adduced by the prosecution, it is well-established that at the time of alleged incident, age of the prosecutrix was about 14 years and 8 months and she was studying in class 9. Thus, the finding of the trial Court in this regard is in

accordance with the evidence available on record. With regard to the alleged incident, Jairam Dhruve (PW-2) father of the prosecutrix, in his Court statement has deposed that on the date of incident, her daughter (prosecutrix) alongwith one of her friends went to village Taktoiya to see dance programme. On the way, appellant forcibly took the prosecutrix on his motorcycle and eloped. According to father of the prosecutrix, immediately after the incident, Mayabai, informed him about the incident. Thereafter, he lodged F.I.R. (Ex.P-14). Prosecutrix (PW-1) in her Court statement has also supported the entire case of prosecution. She has deposed that on the date of incident, on the way, appellant came there and took her forcibly in his motorcycle and took her to village Sardha and there he performed sexual intercourse with her. On the next day, appellant took her to village Paraswara, from where police recovered prosecutrix. During her cross-examination, prosecutrix has admitted the fact that, firstly, appellant took her to his house, took some money from there and went to village Sardha in motorcycle. On the next day, they both went to village Lormi. On the way, they purchased some bangles, saree and gave measurement for stitching blouse. From the above admissions made by the prosecutrix, it appears that prosecutrix was the consenting party but from the evidence adduced by the prosecution, it is well-established that, at the time of incident, age of the prosecution was about 14 years and 8 months. Thus, consent of the prosecutrix is not a legal consent and hence, conviction made by the trial Court is in accordance with law.

9. Looking to the entire evidence adduced by the prosecution, it is clear that there is sufficient evidence against the appellant to hold him guilty.

In my considered view, the trial Court has rightly convicted the appellant.

10. Consequently, the appeal has no merit and is, therefore, dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**