

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1531 of 2016**

- Subhash Korva, S/o Faguram Pahadi Korva, aged about 21 years, Caste Pahadi Korva, R/o Village Laranga Path, Police Station Sanna, District Jashpur, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Sanna District Jashpur, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Varindra Pratap Singh, Advocate.
For Respondent/State	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****27/08/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 30/06/2016 passed in Session Case No. 37/2015 by learned Special Judge under the (POCSO Act 2012) and Additional Sessions Judge(FTC), Jashpur, District-Jashpur(C.G.), whereby the Appellant has been convicted for the offence punishable under Sections 363 & 366 of the IPC and Section 6 of the POCSO Act 2012 and sentenced to undergo RI for 4 years and to pay fine of Rs. 500/-, RI for 4 years and to pay fine of Rs. 500/- and RI for 10 years and to pay fine of Rs. 1,000/- respectively, with default stipulations. All the jail sentence to be run concurrently.
2. In this case at the relevant time, age of the prosecutrix was about 14 years. According to entries of progress report of the prosecutrix Ex. P-

16, her date of birth is 19.06.2001. The case of prosecution in short is that on 14.07.2014, when father of the prosecutrix returned home, he saw that the prosecutrix was not in home, after search when she was not found, on 17.07.2014, he lodged an FIR against the Appellant as the Appellant did the same prior to 1 ½ years from the incident. On the basis of report made by father of the prosecutrix, offence has been registered against the Appellant. During course of investigation, the prosecutrix was recovered from the possession of the Appellant from Pratapgarh (U.P.) vide recovery memo Ex. P-34. Statement of the prosecutrix was recorded under Sections 163 & 164 of Cr.P.C Later on, statements of witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed charges against the Appellant. The prosecution has examined as many as 18 prosecution witnesses. No defence witness has been examined by the Appellant. 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.

3. After trial, the Trial Court has convicted and sentenced the Appellant 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 from the statement of the prosecutrix and finding of the Trial Court, it is well established that she was a consenting party in the alleged act and she herself left her house on her own will and joined the company of the Appellant and stayed with him in Pratapgarh (U.P.). With regard

to the age of the prosecutrix, on perusal of statements of mother Sudhni Bai (PW-2) father Sarodhi Yadav (PW-3) and sister Pushpa Yadav (PW-4) of the prosecutrix, it is also established that at the time of incident, she was aged more than 18 years. But, the Trial Court has not appreciated these facts and only on the basis of ossification test report, Trial Court has convicted the Appellant. The Counsel lastly submits that radiology report of the prosecutrix is also suspicious, therefore, 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 available. I have also gone through the statements of the witnesses minutely.
7. In her Court statement, prosecutrix (PW-1) deposed that the Appellant had taken her to Pratapgarh (U.P.) where they worked as labourer in brick-kiln and there the Appellant used to commit sexual inter-course with her. During cross-examination, this witness admitted that she herself went to village Kathalpat along with the Appellant on foot. Thereafter, in Pratapgarh, where the Appellant and the prosecutrix were working, the prosecutrix never complaint to anyone that she has been molested, being raped or being harassed by the Appellant. She further admitted that in Pratapgarh, when her brother was reached to pick her along with Police personnel, even then also, the prosecutrix was not disclosed the incident to her brother. From the above statement of this witness, it appears that she was a consenting party in

the alleged act and she herself left her house and joined the company of the Appellant and stayed with him in Pratapgarh as husband wife. With regard to the age of the prosecutrix, in her Court statement, she deposed that she don't know what age has been entered in her school register, she admitted that they are four brothers and sisters, her elder brother is aged about 24-25 years, her mother Sudhni Bai (PW-2), in paragraph 4 of her cross-examination admitted that her elder son is aged about 25-26 years, elder sister of the prosecutrix is 1 ½ years younger than her elder son. She further admitted that the prosecutrix is 3 years younger than her elder sister Pushpa (PW-4). If this statement can assumed to be true, even then also, at the relevant time, the age of the prosecutrix would be 20 years. Father of the prosecutrix Sarodhi Yadav(PW-3) also admitted in his cross-examination that he don't know the age of the prosecutrix nor he registered her date of birth in *Kotwari Panji*. He further deposed that elder sister of the prosecutrix Pushpa (PW-4) is a married lady, at the relevant time her age was 25 years and the prosecutrix is 3 years younger than her elder sister Pushpa (PW-4). From the statements of Sudhni Bai (PW-2) father Sarodhi Yadav (PW-3) and sister Pushpa Yadav (PW-4) of the prosecutrix, at the relevant time age of the prosecutrix was about 20 years. However, in her progress report Ex. P-16 her date of birth is mentioned as 19.06.2001. But, father of the prosecutrix Sarodhi Yadav (PW-3) admitted in paragraph 8 of his cross-examination that at the time of admission in school, the age of the prosecutrix was about 9-10 years and the teacher who used to make entries in school, has entered the date of birth by her own will. Thus, progress report also not extends any benefit to the prosecution case. With regard to the

radiology report, of Dr. Sarita Singh (PW-7) who performed radiology test Ex. P-11, has deposed that according to her report, age of the prosecutrix is 14-15 years. But, she further deposed that the prosecutrix was not brought to her. Only on the basis of x-ray reports, she assumed the age of the prosecutrix. Name and address of the prosecutrix is mentioned on the x-ray plate Ex. P-12, but signature of radiographer is missing and nor any note is appended there. Looking to the admission made by this witness, radiology report is also suspicious.

8. Looking to the entire evidence available on record, it is clear that the prosecution has failed to prove the age of the prosecutrix that at the time of incident she was aged below 18 years and from the statements of Sudhni Bai (PW-2) father Sarodhi Yadav (PW-3) and sister Pushpa Yadav (PW-4) of the prosecutrix, at the relevant time she was aged about 20 years. Thus, the conviction of the Appellant is not sustainable and finding of the Trial Court is not accordance with the evidence available on record. Hence, the impugned order dated 30/06/2016 passed in Sessions Trial No. 37/2015 by learned Special Judge under the (POCSO Act 2012) and Additional Sessions Judge(FTC), Jashpur, District-Jashpur(C.G.) is set-aside.
9. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him.
10. 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