

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1298 of 2016

- Joharsingh @ Jaharsingh, S/o Fulsingh @ Bhaddu Agariya, Aged About 33 Years, R/o Village Jakhanadih Para, Chhindidih, Police Station Kukdur, District Kabirdham, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through The Police Station Kukdur, District Kabirdham, Chhattisgarh.

---- Respondent

For Appellant : Shri V.P. Singh, Advocate.

For State/Respondent : Shri Sushil Sahu, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

18/08/2021

1. This appeal has been preferred against the impugned judgment dated 30/07/2016 passed in Special Sessions Trial No.60/2016 by the Special Judge POCSO Act, 2012, (F.T.C.), District – Kabirdham, (C.G.), wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 6 of POCSO Act, 2012	R.I. for 10 years & fine amount of

	Rs.5,000/- with default stipulations.
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2. Brief facts of the prosecution case are that on 28/01/2016, a written report was lodged by the prosecutrix against appellant alleging that about 1 ½ years ago, appellant committed physical relationship with her on pretext of marriage, due to which she became pregnant and a child was born, who is now about 5 months old. It is alleged that appellant did not perform marriage with her and perform marriage with another women. On the basis of the above report, offence has been registered. Statement of prosecutrix and other witnesses were 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 innocence and false implication.
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. 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. On perusal of statement of the prosecutrix and other material available on record, it is established that prosecutrix was the consenting party and she herself had made physical relationship with appellant on her own

will. With regard to age of the prosecutrix, there is no documentary evidence available on record on the basis of which it can be said that on the date of alleged incident, prosecutrix was below 18 years of age. On the basis of admissions made by father of the prosecutrix namely Suddharam (PW-12), it appears that at the time of incident, age of the prosecutrix was about 20 years. Since, there is no conclusive evidence available on record on the basis of which it can be said that at the time of alleged incident, age of the prosecutrix was below 18 years of age. Thus, conviction of the appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. Prosecutrix (PW-10) in her Court statement has deposed that there was love relationship between her and appellant, due to which she got pregnant. She further deposed that appellant used to say her that he would take her and keep her with him but he did not do so. Then, a village meeting was held where appellant had confessed that he would take her with him but he did not do so. During her cross-examination, she has admitted that before the meeting, her parents had gone to some other village to attend a marriage ceremony leaving the appellant with her in the house and appellant and prosecutrix stayed together for about 8-10 days, and the fact that prosecutrix and appellant were staying together, was in the knowledge of her parents.

She further deposed that parents of the appellant did not like staying of appellant with her. She further admitted that she got pregnant due to love relationship between her and appellant and all the villagers were also aware about this fact. Mukhram (PW-1), Sudhar Bai (PW-3), Mohit (PW-4), Gautriha (PW-5) have also deposed that when prosecutrix became pregnant then a village meeting was held where appellant has confessed that prosecutrix conceived through him and he would take her with him. The statements of above witnesses were not duly rebutted during their cross-examination. Looking to the above, it is well-established that appellant and prosecutrix developed physical relationship and prosecutrix was the consenting party.

8. With regard to the age of the prosecutrix, there is no any documentary evidence available on record. Suddhram (PW-12), father of the prosecutrix has admitted that neither he know the date of birth of the prosecutrix nor he has admitted the prosecutrix in any school. He has also not made any entry of date of birth of his daughter in Kotwar register. Though prosecutrix (PW-10) in her Court statement has deposed that she was about 16 ½ years of age, but she don't know her exact date of birth. As tutored by police, prosecutrix had told her age about 16 ½ years. G.K. Suryawanshi (PW-9), Radiologist who conducted ossification test has opined that as per radiologist report, average age of the prosecutrix is 16 ½ years. He further deposed that in radiologist report, though age of the prosecutrix is 16 ½ years but difference of about 2 years in the age of prosecutrix may occur. Suddhram (PW-12) in his Court statement in paragraph 6 has admitted that his age is about 45 years and prosecutrix (PW-10) is his 2nd child. Marriage of this witness was held about 25 years ago and

after three years of his marriage, a boy was born and after two years, prosecutrix (PW-10) was born, and if, age of father of the prosecutrix is taken into consideration, then age of the prosecutrix would come around 20 years. Looking to the above evidence adduced by the prosecution, it is not established that age of the prosecutrix at the time of alleged incident was below 18 years. Since, prosecutrix (PW-10) was the consenting party and it is not established that at the time of alleged incident, age of the prosecutrix was below 18 years, the conviction of the appellant is not sustainable. Looking to the evidence available on record, in my considered view, appellant is entitled to get benefit of doubt.

9. Consequently, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge 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