

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 54 of 2018**

- Aietram, S/o Shri Lachchan Kumar, Aged About 18 Years & 5 months (as per order sheet), R/o Dunudunipani, P.S. Piperchedi, Dist. Gariyaband, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Piperchedi, Dist. Gariyaband, Chhattisgarh.

---- Respondent

For Appellant	:	Shri J.K. Gupta, Advocate.
For State/Respondent	:	Shri Aakash Gupta, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board**12/08/2021**

1. This appeal has been preferred against the impugned judgment dated 25/11/2017 passed in Sessions Trial No.11/2017 by the Additional Sessions Judge, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 450 of the I.P.C.	R.I. for 3 years & fine amount of Rs.200/- with default stipulations.
U/s 363 of the I.P.C.	R.I. for 3 years & fine amount of Rs.200/- with default stipulations.
U/s 366 of the I.P.C.	R.I. for 5 years & fine amount of Rs.

	500/- with default stipulations.
U/s 376(1) of the I.P.C.	R.I. for 7 years & fine amount of Rs. 500/- with default stipulations.
U/s 4 of POCSO Act,	R.I. for 7 years & fine amount of Rs.500/- with default stipulations.
All sentences to run concurrently.	

2. In the present case, age of the prosecutrix (PW-2) at the relevant time was about 15 years. According to the entries in *Dakhil Kharij Panji*, vide Ex.P-15C date of birth of the prosecutrix is mentioned as 22.04.2000. Date of incident is 07.06.2015. According to case of the prosecution, on 04.06.2015 at about 23:00 hours, when prosecutrix was sleeping at her house with her grandmother namely Mangli Bai (PW-8), accused/appellant entered in the house and forcibly took out the prosecutrix to a nearby deserted place and committed forcible sexual intercourse with her. Thereafter, appellant fled away from the spot and the prosecutrix while returning house was seen by Kejauram (PW-4). She narrated the entire incident to Kejauram and then to her family members. On 10.06.2015, F.I.R. vide Ex.P-4 was lodged by the prosecutrix (PW-2) against appellant. Thereafter, she was medically examined by Dr. B. Bara (PW-16). Statement of the 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 16 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. Referring to the statement of prosecutrix, it is argued by learned Counsel that on its perusal, it appears that there was love relationship between appellant and prosecutrix and due to this reason, prosecutrix left her house on her own will and join the company of the appellant at a deserted place. Further referring to paragraph 8 of cross-examination of the prosecutrix, it is argued that prosecutrix herself has categorically admitted the fact that appellant had not done any wrongful act with her. Despite of that, trial Court has convicted the appellant. Also, while examining the prosecutrix, doctor has not given any definite opinion regarding commission of alleged act. Therefore, 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 record, statement of the witnesses and other annexed documents minutely.
7. Prosecutrix (PW-2) in her Court statement has deposed that on the

date of incident, she was sleeping in her house and about 11:00 PM, appellant entered in her house, tied her mouth with clothes and took her towards stream and committed rape with her. Thereafter, appellant left the spot and she returned to her house. During cross-examination, though, she denied the suggestion that there was love relationship between her and appellant but she had admitted that on the date of incident at night, when her grandmother Mangli Bai (PW-8) woke up and did not find the prosecutrix in the house, then she (grandmother), alongwith other villagers came out of the house to search her and reached at the stream. She further admitted that after seeing her grandmother and other villagers coming, appellant fled away from the spot and she stayed there. In paragraph 8 of her cross-examination, she further admitted the fact that appellant had not done any wrongful act with her. She further admitted that a meeting was held in the village regarding love relationship between her and appellant and after four days of the meeting, she lodged F.I.R. vide Ex.P-4 against appellant on being told by her father. Uncle of the prosecutrix Kejauram (PW-4), also deposed that when he came to know that her niece (prosecutrix) was missing, he went towards the stream to search her, then one Sunder (*mama* of the prosecutrix) told him that he has seen the appellant fleeing away. In paragraph 4 of his cross-examination, this witness also admitted that he has seen the prosecutrix at the spot and when he asked the prosecutrix, then she replied that she had come to attend call of nature. He categorically deposed that at the time of incident, prosecutrix had made no complaint regarding the alleged act. Mangli Bai, grandmother of the prosecutrix (PW-8) in her Court statement has deposed that on the date of incident at night,

prosecutrix was sleeping with her and when she woke up at about 11:00 PM then she found that prosecutrix was not present in the house. Later on, other family members searched the prosecutrix and brought her back to the house. Dr. B. Bara (PW-16) who examined the prosecutrix has also opined that no injury was found in the body of the prosecutrix. Hymen of the prosecutrix was old ruptured and no recent symptom of forcible sexual intercourse was found.

8. On minute examination of statement of above witnesses, it is clear that though, prosecutrix (PW-2) has admitted the fact that appellant has forcibly caught her and committed rape with her, but her statement is not reliable, as it is not in dispute that prosecutrix was sleeping with her grandmother Mangli Bai (PW-8), and if appellant had forcibly taken her, then her grandmother Mangli Bai would have awoken. From the admission made by the prosecutrix, it is also clear that when other family members and villagers came to search her, then appellant fled away from the spot and at that time she had not made any complaint to them regarding the alleged act. From her admission, it is also clear that there was love relationship between prosecutrix and appellant and a meeting was held in the village regarding the same. Prosecutrix has also admitted the fact that appellant has not done any wrongful act with her. Looking to the entire statement of prosecutrix (PW-2), Kejaaram (PW-4) and Mangli Bai, grandmother of prosecutrix (PW-8), it appears that there was love relationship between prosecutrix and appellant and due to this reason prosecutrix herself had left the house and joined the company of the appellant on the date of incident. There is no evidence available on record which shows that appellant, in any manner, had enticed or allured the prosecutrix to join his company.

There is also no evidence available which show that appellant has committed forcible sexual intercourse with the prosecutrix. Therefore, findings of the trial Court appears to be not in accordance with the evidence available on record. Thus, conviction of the appellant is not sustainable.

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