

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.580 of 2017

Judgment Reserved on : 6.9.2021

Judgment Delivered on : 17.9.2021

Bharat Chauhan, son of Dileshwar Chauhan, aged 22 years, resident of Village Katbitla Vijaynagar, P.S. Urga, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Urga, District Korba, Chhattisgarh

--- Respondent

For Appellant : Shri Krishna Kumar Dewangan, Advocate
For Respondent : Shri Akhtar Hussain, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 20.1.2017 passed by the Additional Sessions Judge (FTC), Korba in Sessions Trial No.49 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(2)(i) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000 with default stipulation
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act')	Rigorous Imprisonment for 10 years and fine of Rs.2000 with default stipulation
	All the jail sentences are directed to run concurrently

2. According to the prosecution case, at the relevant time, age of the

prosecutrix (PW1) was about 13 years. On 24.10.2015, her mother Mainabai (PW2) lodged a report (Ex.P2) alleging therein that she saw an impression of pregnancy on the stomach of the prosecutrix. On being asked, she told her that the Appellant had come to their house 7 months before and committed forcible sexual intercourse with her. Later on also, he continued to commit sexual intercourse with her. He had promised her to marry and had asked her not to disclose about the incident to anyone. On the basis of the said report, offence was registered. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. During the course of investigation, the prosecutrix gave birth to a male child. According to the report of DNA (Ex.P24), it was found that the Appellant and the prosecutrix are the biological father and mother of the said child. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.

3. To bring home the offence, the prosecution examined as many as 17 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the

Appellant has been wrongly convicted by the Trial Court without there being sufficient evidence on record. From the statement of the prosecutrix (PW1), it is well established that she was a consenting party and the alleged commission of sexual intercourse was done by the Appellant with her own consent. With regard to the age of the prosecutrix, there is no conclusive evidence on record on the basis of which it could be said that she was below 18 years of age at the relevant time. Though as per the entries of Dakhil Kharij Register (Ex.P4C), the date of birth of the prosecutrix is 8.2.2002, but these entries relate to the period when the prosecutrix was admitted in the school in 6th standard. On what basis these entries were recorded is not established and the person who got the said entries recorded has also not been examined. Therefore, the entries of Ex.P4C cannot be said to be reliable. Referring to the statement of Mainabai (PW2), mother of the prosecutrix, it was argued that she admitted that elder brother of the prosecutrix was 22 years old and the prosecutrix was 1 year younger to him. Therefore also, it is established that the prosecutrix was above the age of 18 years. Therefore, conviction of the Appellant is not sustainable.

6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and minutely perused the record of the Trial Court including the statements of the witnesses.

8. With regard to the incident, in her Court statement, the prosecutrix (PW1) deposed that in the month of March when she had gone to attend the engagement ceremony of her brother, at that time, the Appellant had taken her to an agricultural field and there he committed forcible sexual intercourse with her. Since he had threatened her to beat her, she did not disclose about the incident to anyone. She further deposed that 15 days thereafter, on the date of marriage of her brother, when she had gone to attend the call of nature, at that time also, the Appellant committed sexual intercourse with her and, therefore, she got pregnant. Later on, a social meeting took place in which she told her pregnancy to be from the Appellant.
9. Mainabai (PW2), mother of the prosecutrix deposed that when the villagers told her about the pregnancy of the prosecutrix then she asked her in this regard. At that time, the prosecutrix did not tell her anything. Later on, when she called a social meeting then the prosecutrix told that her pregnancy was from the Appellant. Then the Appellant was also called in the meeting. On being asked, he admitted his guilt.
10. From the statements of the prosecutrix (PW1) and her mother Mainabai (PW2), it appears that the prosecutrix was a consenting party because as stated by her, the two incidents of commission of sexual intercourse with her took place with a gap of 15 days, but she did not make any complaint about any of the said incidents. Later on also, she did not make any complaint in this regard. Even when her mother asked about her pregnancy, she did not tell her

about her pregnancy to be from the Appellant and did not make any complaint in this regard. She disclosed about the incident for the first time in the social meeting. Thus, from her above conduct, it is established that she was a consenting party.

11. As regards age of the prosecutrix (PW1), in her Court statement, she deposed that her date of birth is 8.2.2002. But, in paragraph 15 of her cross-examination, first she stated that her elder brother was aged 21 years and he was 4 years older than her. She further deposed that she did not know anything in this regard. Her mother Mainabai (PW2) also deposed that the prosecutrix (PW1) was aged about 15 years, but what was her date of birth was not known to her. In paragraph 6 of her cross-examination, she also admitted that age of her second child, i.e., son was about 22 years and the prosecutrix was 1 year younger to him. Looking to the above statements of the prosecutrix (PW1) and her mother Mainabai (PW2), it appears that elder brother of the prosecutrix was about 21-22 years and the prosecutrix was aged about 20-21 years. There is no clinching oral evidence available on record to show that the prosecutrix was below 18 years of age. With regard to the date of birth of the prosecutrix, Dakhil Kharij Register (Ex.P4C) in which date of birth of the prosecutrix is mentioned as 8.2.2002 is available on record. According to Ex.P4C, admission of the prosecutrix was done in the school in 6th standard on 16.6.2012. Asha Sahu (PW3), Incharge Headmistress of the school admitted that the entries of Ex.P4C were recorded on the basis of the transfer certificate of 5th standard. Initially when the prosecutrix was admitted in the school

in 1st standard, at that time, who got the prosecutrix admitted in the school and on what basis entries regarding her date of birth were recorded in the school record, evidence in this regard are not produced by the prosecution. Therefore, the prosecution does not get support from Ex.P4C, particularly, considering the statement of Mainabai (PW2), mother of the prosecutrix that age of the prosecutrix was about 20-21 years.

12. Since the prosecutrix was a consenting party and there is no conclusive evidence available on record on the basis of which it could be established that she was below 18 years of age, conviction of the Appellant is not sustainable.
13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of all the charges framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE