

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.718 of 2021

- Anil Kumar Sahu, S/o Arjun Sahu, Aged About 21 Years, R/o Ganesh Nagar, Hirri, Police Station Hirri, District - Bilaspur, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through - Station House Officer, Police of Police Station - Hirri, District - Bilaspur, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Mr. Purnendra Khichariya, Advocate
Mr. Sudeep Verma, Dy. GA

Hon'ble Justice Shri Arvind Singh Chandel

Hon'ble Justice Shri Deepak Kumar Tiwari

Judgment on Board

Per Arvind Singh Chandel, J.

09/12/2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 21.06.2021 passed by the learned Additional Session Judge/First F.T.S.C. (POCSO) in Special ST No.04/2020, by which the appellant has been held guilty of commission of offence under Sections 363 & 366-A of IPC and Section 04 (2) of POCSO Act and sentenced to undergo RI for 5 years, RI for 5 years and RI for 20 years with default stipulations and the offences were directed to run concurrently.
2. As per the case of prosecution, at the relevant point of time, age of the prosecutrix i.e. PW-2 was about 17 years. Her date of birth is 22.08.2003. It was the case of prosecution that on 03.11.2019,

parents of prosecutrix had gone for doing their work, at that time prosecutrix and her brother and sister were at home. When parents of prosecutrix returned back, they found that prosecutrix was not inside the house. After their search was over, they lodged a missing report in police station regarding prosecutrix, on the basis of which initially the offence under Section 363 of IPC was registered. During the course of investigation on 06.11.2019, prosecutrix was recovered from the possession of appellant near Bus Stand, Tifra vide recovery memo (Ex-P/21). Her statement was recorded under Section 161 of CrPC and she was also medically examined by PW-9 Dr. Nikita Kanwar. After recording her statement and other witnesses under Section 161 of CrPC and collecting other evidence, charge sheet was filed. The Trial Court examined as many as 15 witnesses. The appellant denied the guilt and no defence witness was examined. Thereafter, the Trial Court convicted the appellant for the aforesaid offences, as mentioned in para 1 of this judgment.

3. Mr. Khichariya, learned counsel for appellant, submits that without being any evidence available on record, the Trial Court has wrongly convicted appellant only on the basis of FSL report (Ex-P/31) and on the basis of statement of doctor. In her court statement, prosecutrix herself admitted the fact that she left her house with her own will and joined company of appellant at Ratanpur and she also admitted categorically that no sexual intercourse was committed by appellant with her, therefore, no case is made out, inspite of that without being any evidence, the Trial Court has wrongly convicted the appellant.

4. Mr. Verma, learned State counsel, opposes the argument advanced by learned counsel for the appellant.
5. We have heard learned counsel for the parties and perused the record of the Trial Court and gone through the statement of prosecutrix and other witnesses and also perused the other evidence adduced by the prosecution in this case.
6. There is no dispute on the point that at the time of incident, the prosecutrix was aged about 17 years and her date of birth is 22.08.2003.
7. The prosecutrix (PW-2) in her court statement did not support the case of the prosecution in any manner and turned hostile, however, she admitted the fact that she herself left her house with her own will. She also admitted the fact that the appellant met her at Ratanpur and thereafter both went to Mahamaya Mandir and thereafter again went to 36 Mall, Bilaspur and also visited the house of friend of the appellant. In para 8 of her examination-in-chief, she categorically admitted that the appellant has never committed any sexual intercourse with her. Again in para 11 of her cross-examination, she admitted this fact. The prosecutrix was medically examined by Dr. Nikita Kanwar (PW-9), her report is (Ex. P-17). It was found by her that hymen of the prosecutrix was not present, two fingers could have easily entered in her vagina and she was habitual to sexual intercourse as opined by the doctor. She is unable to give any opinion regarding recent sexual intercourse with the prosecutrix.
8. On minute examination of the above evidence, which is available on

record, it makes clear that prosecutrix (PW-2) did not support the case of prosecution in any manner. She admitted the fact that she herself left her house on her own will and joined the company of the appellant. She categorically admitted the fact that no sexual intercourse has been done with her by the appellant and from medical report of the prosecutrix, it is also established that no injury was found on her body, her hymen was absent and she was found habitual to sexual intercourse. The Trial Court has convicted the appellant only on the basis of FSL report (Ex. P/31). On the panty of the prosecutrix and on underwear of the appellant, human sperm was found, but there is no evidence available on record which can show that the said sperm was of the appellant. Therefore, according to us, the prosecution has failed to prove its case against the appellant. The finding of the Trial Court regarding conviction of the appellant is not in accordance with the evidence available on record and the Trial Court has wrongly convicted the Appellant in this regard.

9. Consequently, the Appeal is allowed. The impugned order dated 21.06.2021 is set aside and the appellant is acquitted of the charges framed against him. The appellant is in jail. He be released forthwith if not required in any other case.
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

Sd/-
Deepak Kumar Tiwari
Judge