

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1182 of 2014

Judgment Reserved on : 9.2.2021

Judgment Delivered on : 8.6.2021

1. Durgesh Chandrawanshi, S/o Maniklal Chandrawanshi, aged about 22 years, R/o Village Asra, Police Station Dongargaon, District Rajnandgaon, Chhattisgarh
2. Subhash, S/o Late Asharam Valde, aged about 21 years, R/o Village Shikaritola, Police Station Chhuriya, District Rajnandgaon, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Dongargaon, District Rajnandgaon, Chhattisgarh

--- Respondent

For Appellants	:	Shri B.P. Singh, Advocate
For Respondent	:	Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 30.10.2014 passed by the Additional Sessions Judge (FTC), Rajnandgaon in Special Sessions Trial No.7 of 2014, whereby the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant No.1, Durgesh Chandrawanshi</u>	
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500 with default stipulation
Under Section 366A of the	Rigorous Imprisonment for 7

Indian Penal Code	years and fine of Rs.500 with default stipulation
<u>Appellant No.2, Subhash</u>	
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500 with default stipulation
Under Section 366A of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500 with default stipulation
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500 with default stipulation
Under Section 3, 4 of the Protection of Children from Sexual Offences Act	Rigorous Imprisonment for 7 years and fine of Rs.500 with default stipulation The jail sentences of the Appellants are directed to run concurrently

2. Prosecution case, in short, is that the prosecutrix (PW2) was aged about 14 years. According to the entries of Dakhil Kharij Register (Ex.P15), her date of birth is 15.8.1999. The date of incident is 19.10.2013. On 22.10.2013, the prosecutrix (PW2) lodged First Information Report (Ex.P3) alleging that on 19.10.2013 at about 6 p.m., she had gone to the house of Vani (PW7) for getting tuition from her. There, on getting call of nature, she went outside towards the road to attend the call of nature. At that time, both the Appellants came there on a motorcycle. Appellant No.1 was driving the motorcycle and Appellant No.2 was a pillion rider. Appellant No.2 forcibly made her sit on the motorcycle and they took her to an agricultural field and thereafter Appellant No.2 committed forcible sexual intercourse with her there. Thereafter, both the Appellants took her back and left her at her house. She narrated the incident to her mother and father. Offence was registered. She

was medically examined by Dr. Ekta Daniel (PW13). Her report is Ex.P17. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charges.

3. To bring home the offence, the prosecution examined as many as 15 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that the Trial Court has convicted the Appellants without there being sufficient and clinching evidence against them. There is no conclusive evidence on record on the basis of which it could be said that the prosecutrix was below 18 years of age. The prosecution has relied on the entries of Dakhil Kharij Register (Ex.P15), but author of the document has not been examined. It was further submitted that date of birth recorded in the register (Ex.P15) has also not been proved. According to the evidence led by the prosecution, the entries were got recorded by *Bua*, sister of Pardesi (PW4), father of the prosecutrix, but said *Bua* has not been examined by the prosecution. Apart from that, on what basis the

entries were made in the Dakhil Kharij Register is not established. From the statement of Dr. Ekta Daniel (PW13), it is also established that at the time of examination of the prosecutrix, her secondary sexual characters were found to be fully developed. Her breasts were also fully developed. According to the statement of Dr. Ekta Daniel, physical appearance/symptoms of the prosecutrix were of an adult person. Therefore, it is not established that at the time of alleged offence, the prosecutrix was below 18 years of age. It was further submitted that there are material contradictions and omissions in the statements of the prosecutrix and other witnesses. Savitri (PW3), mother of the prosecutrix has not supported the case of the prosecution and turned hostile. According to the statement of the prosecutrix, after the incident, when the Appellants saw her father coming towards them then they left her on their motorcycle at her house. But, contrary to this, father of the prosecutrix has deposed that the prosecutrix had come home weeping and told him about the incident. Apart from that, Vani (PW7) deposed that when the prosecutrix did not return after attending the call of nature then she went to the house of the prosecutrix and informed her parents that the prosecutrix had not returned after attending the call of nature. According to Vani (PW7), the prosecutrix had returned after 1-2 hours. According to Learned Counsel appearing for the Appellants, looking to the above contradicting statements of the witnesses, it appears that the prosecutrix was a consenting party. Due to love relationship with Appellant No.2, she herself went with him and the alleged act was committed by him with her own consent. Therefore, conviction of the Appellants 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 perused the entire record of the Trial Court including the statements of witnesses with due care.
8. With regard to age of the prosecutrix (PW2), in her Court statement, she deposed that her date of birth is 15.8.1999 and she was studying in 9th standard. This witness has admitted the fact that last year also she was studying in 9th standard itself. According to this witness, she has 1 elder brother, who is 3 years older than her, but what is his date of birth was not known to her.
9. Savitri (PW3), mother of the prosecutrix has also not been able to state her date of marriage and date of birth and age of her and of her children.
10. Pardesi (PW4), father of the prosecutrix also admitted that his son is older, but he is not able to state his date of birth. He further admitted that he has stated his estimated age. According to this witness, for admitting the prosecutrix in the school, his sister had taken the prosecutrix to the school. But, the sister of this witness has not been examined by the prosecution. Entries of the Dakhil Kharij Register (Ex.P15) have been proved by D.S. Mandavi (PW12), Headmaster of the school. He also admitted that the entries made in the Dakhil Kharij Register were based on the Middle School Certificate. He further admitted that the said entries in the Dakhil Kharij Register were not made by him. He further

admitted that at the time of admission of the prosecutrix in the school, who had filled in the school admission form was not known to him.

11. Dr. Ekta Daniel (PW13), who examined the prosecutrix, deposed that at the time of examination of the prosecutrix, her secondary sexual characters were found to be fully developed. Her breasts were also fully developed. Her physical appearance/symptoms were like a major person.
12. Though according to the entries of Dakhil Kharij Register (Ex.P15), date of birth of the prosecutrix is 15.8.1999, these entries were made on the basis of certificate of 8th standard and the entries which were made in the Dakhil Kharij Register at the time of admission of the prosecutrix in 1st standard have not been placed on record. The author, i.e., the *Bua* of the prosecutrix, who got the date of birth of the prosecutrix to be 15.8.1999 recorded in the school record, has also not been examined. The prosecutrix herself and her parents have also not been able to state exact date of birth or age of the prosecutrix. Apart from that, as opined by Dr. Ekta Daniel (PW13), secondary sexual characters and breasts of the prosecutrix were fully developed and her physical appearance/symptoms were also like a major person. Looking to the totality of the case and the evidence adduced by the prosecution in this regard, I find that the prosecution has not been able to prove that at the time of alleged incident, the prosecutrix was below 18 years of age.

13. With regard to the incident, the prosecutrix (PW2) deposed that she had gone to the house of Vani (PW7) for getting tuition from her. Thereafter, when she was going to an agricultural field to attend the call of nature, at that time, the Appellants came there on a motorcycle. They gagged her mouth, tied her hands and took her on the motorcycle towards a field. There, Appellant No.2 made her fall down and he committed forcible sexual intercourse with her. The prosecutrix further deposed that when she did not return her house then her father and other persons were coming for her search. The Appellants having seen them took her back on the motorcycle to the place from where they had picked up her and left her there. During cross-examination, this witness deposed that when her hands were tied up she had suffered injuries in her hands and when she was made to fall down, at that time also, she had suffered injury on her back. But, from perusal of her examination report (Ex.P17), it appears that she had not sustained any bodily injury and according to the opinion of the examining doctor, she was found habitual to sexual intercourse.
14. Savitri (PW3), mother of the prosecutrix has not supported the case of the prosecution and turned hostile.
15. Pardesi (PW4), father of the prosecutrix deposed that on the date of incident, the prosecutrix returned home weeping and complained him of the incident. During cross-examination, this witness categorically stated that on that day, he, his wife and his son, all the three members were present at home.

16. Vani (PW7) deposed that the prosecutrix had come to her house for getting tuition from her and thereafter telling her that she was to attend the call of nature, the prosecutrix went out, but she did not return for about ½ hour. On this, she went to the house of the prosecutrix and told about the circumstance to her parents. According to this witness, the prosecutrix had returned home after 1-2 hours.
17. On a minute examination of the above evidence, it seems that the entire story narrated by the prosecutrix is suspicious because as alleged by the prosecutrix both the Appellants had forcibly taken her on a motorcycle after tying up her hands and Appellant No.2 had committed forcible sexual intercourse with her in an agricultural field and as a result of which she had sustained injuries in her hands and back. But, in her medical examination, no bodily injury was found. Furthermore, as stated by the prosecutrix, after the incident, her parents and other persons were coming towards her in her search and seeing them the Appellants took her on their motorcycle and left her at the place from where they had picked up her. But, Pardesi (PW4), father of the prosecutrix deposed that on that day, he, his wife and his son were present at home and the prosecutrix had returned home weeping and narrated there about the incident. From the statement of Vani (PW7), it also appears that after ½ hour, she had gone to the house of the prosecutrix and informed that the prosecutrix had not returned after attending the call of nature. After this information also, the parents of the prosecutrix did not try to search out the prosecutrix. Vani (PW7) further deposed that the prosecutrix herself had returned home

after 1-2 hours. From the above, it is clear that the prosecutrix (PW2), Pardesi (PW4) and Vani (PW7) have contradicted their statements. Furthermore, as per the prosecutrix, she was forcibly taken by both the Appellants on their motorcycle, but the rape was committed with her by Appellant No.2 only and she has not levelled any allegation against Appellant No.1 of committing anything wrong with her, which appears to be unnatural. This goes to show that there was a relationship between the prosecutrix and Appellant No.2 and, therefore, the alleged act of sexual intercourse was done by Appellant No.2 only. Looking to the entire evidence adduced by the prosecution, in my considered opinion, the Appellants are entitled to get benefit of doubt.

18. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.

Sd/-
(Arvind Singh Chandel)
JUDGE