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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 897 of 2021**

- Ranjeet Sahu S/o Yadnath Sahu, aged about 20 years, R/o Kota, Dongripara, Police Station Kota, District - Bilaspur (C.G.)

---- Appellant/Accused**Versus**

- State of Chhattisgarh, Through- Station House Officer, Police of Police Station – Sarkanda, District - Bilaspur (C.G.)

---- Respondent

For Appellants/Accused	:	Smt. Sunita Sahu, Advocate
For Respondent/State	:	Shri Jitendra Shukla, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

24.11.2021

1. With the consent of learned counsel for the parties, the appeal is heard finally.
2. This appeal arises out of the judgment of conviction and order of sentence dated 05.08.2021 passed by the Additional Sessions Judge, Second Fast Track Special Court, Bilaspur, District Bilaspur (C.G.) in Special Criminal Case (POCSO Act) No. 144/2019, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 363 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC')	Rigorous imprisonment for seven years and pay a fine of Rs. 1,000/- and in default of payment to further undergo additional imprisonment for six months
Under Section 366 of IPC	Rigorous imprisonment for seven years and pay a fine of Rs.1,000/- and in default of payment to further undergo additional imprisonment of six months
Both the sentences to run concurrently	

3. The prosecution case in brief, is that a report was lodged by Santoshi Sahu (PW-8) on 09.02.2019 stating that she is residing at Chingrazpara near Durga Mandir, Bilaspur, she runs a utensils shop in her home. Date of birth of her elder daughter (Prosecutrix – PW-9) is 13.10.2002 studying in 12th standard at Gurukul Vidya Mandir, Bilaspur. On 08.02.2019 at about 11:30 am the prosecutrix (PW-9) was taking her meal and PW-8 Santoshi Sahu was busy in attending the customers in her utensils shop. After about 10-15 minutes when she (PW-8) came back to her house, she did not found the prosecutrix there as she had gone out from the back door of the house without informing anyone. PW-8 informed about the same to her son Nilesh Sahu and she also informed her husband through phone about missing of her daughter. Thereafter, they searched for the prosecutrix (PW-9) at their relatives' house, railway station, bus-stand, but they could not find her. On Suspicion, PW-8 thought that some unknown person inducing her daughter would have abducted. Hence, PW-8 lodged the F.I.R. against unknown person which was registered under Section 363 of IPC in Police Station Sarkanda, Bilaspur under Crime No. 145/2019 vide Ex.-P/10.
4. During investigation, the prosecutrix (PW-9) was recovered on 16.11.2019 from the house of appellant Ranjeet Sahu vide recovery *Panchnama* Ex.-P/1. Prosecutrix (PW-9) was sent for medical examination to CIMS Hospital, Bilaspur vide Ex.-P/17. PW-4 Dr. Palvi Keshri examined the prosecutrix and gave her report Ex.-P/3 and opined that no external injury was present over the body of the prosecutrix, external genitalia was well developed, no definite opinion can be given regarding sexual assault and forceful vaginal penetration. Doctor (PW-4) also prepared two slides from vaginal swab and one faded brown coloured underwear of the prosecutrix, sealed it and handed over the same to lady constable for chemical examination.
5. Ex.-P/2 is seizure of the vaginal slides and seizure of underwear of the prosecutrix. Ex.-P/5 is seizure of *Dakhilakhariz* register (Article 'A') of the

prosecutrix. Ex.-P/8 is the *Nazrinaksha* prepared by Patwari Ashish Toppo (PW-6).

6. Accused/appellant was arrested on 16.11.2019 and was also sent for medical examination to CIMS Hospital, Bilaspur vide Ex.-P/18. PW-7 Dr. Madhu Anand Banjare examined the appellant and gave his report Ex.-P/9 and as per his report, he found nothing abnormal that he could say that the patient/appellant was not able to perform sexual intercourse.
7. After completion of investigation, charge-sheet was filed against the accused/appellant under Sections 363, 366 & 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act. While framing the charges, the trial Court framed the charge against the accused/appellant under Section 363, 366 & 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act which were denied by him and he prayed for trial.
8. The prosecution, in all, has examined 11 witnesses namely PW-1 Shyamu Lal Sahu, PW-2 Smt. Geeta Sahu, PW-3 Smt. Babita Shriwas, PW-4 Dr. Palvi Keshri, PW-5 Prem Pyari Kashyap, PW-6 Ashish Toppo, PW-7 Dr. Madhu Anand Banjare, PW-8 Smt. Santoshi Sahu, PW-9 Prosecutrix, PW-10 Smt. Manorma Tiwari & PW-11 J.A. Khan in support of its case. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C., in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness was examined by appellant.
9. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment while acquitting the appellant of the charges under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, convicted and sentenced him as mentioned in para-2 of this judgment, hence this appeal.

10. Learned counsel for the appellant submits that the appellant has been falsely implicated in the offence. She submits that the learned trial Court wrongly considered the age of the prosecutrix (PW-9) as finding given in its judgment below the age of 18 years. As per *Dakhila-Khariz-Panji* (Article 'A'), the date of birth of the prosecutrix is 13.10.2002 and the age of the prosecutrix considered by the trial Court is 16 years, 3 months & 26 days, but in the court evidence, the prosecutrix herself stated that at the time of incident she was 18 years of age. No other evidence regarding age of the prosecutrix was adduced by the prosecution. Therefore, the basic ingredients for attracting offence under Section 363 & 366 of IPC against the appellant are missing in this case. On the same set of evidence, the appellant was acquitted of the charges under Section 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act.

11. On the other hand, learned counsel for the State supporting the impugned judgment submitted that the trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant/accused by the impugned judgment which calls for no interference by this Court.

12. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

13. PW-9 Prosecutrix has stated in her deposition in para-2 that at the time of incident, she was 18 years of age which is also supported by PW-8 Santoshi Sahu (mother of the prosecutrix) in her deposition in para-2. The evidence of PW-9 & PW-8 has not been controverted by the defence. Therefore, from the evidence of PW-9 (prosecutrix) and PW-8 (mother of the prosecutrix) it stands proved that at the time of incident, the prosecutrix (PW-9) was 18 years of age.

14. PW-5 Prem Pyari Kashyap is the Principal of Private Gurukul Vidha Mandir, Bilaspur, and she proved the *Dakhila-Khariz-Panji* vide Article 'A' in which

the date the birth of the prosecutrix (PW-9 is mentioned as 13.10.2002, but who mentioned this date, there is no any evidence.

- 15.** Santoshi Sahu (PW-8 – mother of the prosecutrix) herself stated that on the date of incident the prosecutrix (PW-9) was 18 years of age, therefore, only on the basis of *Dakhila-Khariz-Panji* (Article 'A'), it cannot be determined that the date mentioned in the *Dakhila-Khariz-Panji* (Article 'A') was the actual date of birth of the prosecutrix (PW-9). Therefore, considering the evidence of PW-8 and PW-9 who have stated that on the date of incident, PW-9 was 18 years of age, she cannot be considered below the age of 18 years as the document (Article 'A') is contrary to the evidence available on record.
- 16.** PW-1 Shyamu Lal Sahu is the uncle of the appellant and witness of the recovery panchnama Ex.-P/1. PW-1 stated that the prosecutrix was recovered by police from the house of the appellant. But, PW-1 stated in cross-examination that he reached the house of the appellant after completing the procedure of recovery panchanama by the police and only he has signed on the document Ex.-P/1 and has not supported the prosecution case.
- 17.** PW-2 Geeta Sahu is the witness of the recovery panchnama Ex.-P/1. PW-2 stated that the prosecutrix was recovered by police from the house of the appellant. PW-3 Babita Shriwas is the lady constable who took the prosecutrix for medical examination to CIMS Hospital, Bilaspur.
- 18.** PW-4 Dr. Palvi Keshri examined the prosecutrix and gave her report Ex.-P/3. PW-4 opined in her report that no external injury present over the body of the prosecutrix and no definite opinion can be given regarding sexual assault upon the prosecutrix. PW- 10 Manorma Tiwari is the Investigating Officer.
- 19.** Prosecutrix (PW-9) stated in her deposition in para-2 that she had a fight with her mother, therefore, without informing anyone she went away from her house to Kota in the house of appellant and was residing there. Thereafter,

police brought her (prosecutrix) in Sarkanda Police Station from Kota and from there the police kept her in girls home. After 15-20 days, she went home alongwith her mother (PW-8). PW-9 further stated in para-5 that her marriage was fixed with the appellant, therefore, she went with the appellant. Santoshi Bai (PW-8 – mother of the prosecutrix) admitted in her cross-examination in para-9 that the prosecutrix told her that she went with the appellant's house on her own free will. PW-8 also admitted that marriage of the prosecutrix with the appellant was under consideration and the appellant is of their society.

20. In view of the above discussion and perusal of the material available on record, I am of the considered opinion that as per *Dakhila-Khariz-Panji* (Article 'A'), it was not proved that the actual date birth of the prosecutrix is 13.10.2002 because PW-9 (prosecutrix) and PW-8 (mother of the prosecutrix) both stated in their depositions that at the time incident, the prosecutrix was 18 years of age. And also looking to the entire conduct of the prosecutrix (PW-9), it was also proved that she left her parental house as her marriage was fixed with the appellant and she went with the appellant on her own free will. So far as charges under Sections 363 & 366 for kidnapping or abducting of the prosecutrix are concerned, there is no eye-witness of the incident. Hence, considering the facts and circumstances of the case, this Court is of the opinion that the main ingredients for offences under Sections 363 & 366 of IPC have not been proved by the prosecution as required under the law.

21. For the foregoing reasons, the appeal is allowed. Conviction and sentences awarded by the trial Court to the appellant under Sections 363 & 366 of IPC are set aside and the appellant is acquitted of charges levelled against him. It is stated that during trial the appellant was on bail and presently is in jail from the date of impugned judgment i.e. 05.08.2021. He be released

forthwith if not required in any other case. If fine amount has been deposited, the same be refunded to the appellant.

Sd/-

(Gautam Chourdiya)
Judge

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