

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.818 of 2016

Judgment Reserved on : 10.8.2021

Judgment Delivered on : 6.9.2021

Bhaiyaram Satnami, aged about 20 years, son of Lilaram Satnami, resident of Village Baheradih, Thana Jaijaipur, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through Police Station Jaijaipur, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Appellant : Ms. Meenu Banerjee, Advocate
For Respondent : Shri Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 15.6.2016 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa in Special Sessions Trial No.15 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000 with default stipulation
Under Section 366A of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.5000 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.10,000 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 (PW3) was about 16 years and 4 months. According to the entries of Dakhil Kharij Register (Ex.P21C), her date of birth is 28.4.1999 and the date of incident is 17.2.2015. On 18.2.2015, father of the prosecutrix, namely, Tankor Narayan (PW4) lodged First Information Report (Ex.P7) of missing of the prosecutrix on the basis of which an offence was registered under Section 363 of the Indian Penal Code. During the course of investigation, the prosecutrix was recovered from Bus Stand Hasaud on 10.8.2015 vide Ex.P28. Her statement was recorded under Section 161 of the Code of Criminal Procedure on the basis of which other offences were added. Statements of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. 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 and clinching evidence on record. From perusal of the statement of the prosecutrix (PW3), it appears that she was a consenting party and due to love relationship with the Appellant she herself left her house and joined the company of the Appellant. With regard to her age, statements of her mother Anita Chandra (PW2) and father Tankor Narayan (PW4) are contradictory. Therefore, their statements are not reliable. The author of the entries of Dakhil Kharij Register (Ex.P21C) has also not been examined and on what basis the said entries were recorded is not made clear and, therefore, the entries of Dakhil Kharij Register also do not support the case of the prosecution. Looking to the entire evidence adduced by the prosecution, age of the prosecutrix was below 18 years at the time of incident, is not established. In this regard, reliance was placed on **Madan Lal v. Dr. Jaswant Batra, 1994 Cri.L.J. 1767, Bapulal v. State of M.P., 2002(3) MPHT 70, Lalta Prasad v. State of M.P., (1979) 4 SCC 193 and Raunki Saroop v. State, 1970 Cri.L.J. 1383.**

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 record of the Trial Court including statements of the witnesses and other material.
8. As regards the incident, the prosecutrix (PW3), in her Court statement deposed that on 17.2.2015 at about 2:00 p.m., the Appellant gave her a telephonic call and telling her that a party was

organised at the house of his friend and they will return from there within 2-4 days took her to Jharkhand. From there, he took her to Bihar and thereafter took her to Punjab. There, he committed sexual intercourse with her against her will. She further deposed that father of the Appellant came to Punjab on 8.7.2015 and took her back from Punjab to Jaipur. Thereafter, her parents took her along with them. In paragraph 6 of her cross-examination, she admitted that she and the Appellant were studying in a same school and, therefore, a love relationship had developed between them. In paragraph 8, she stated that when she was performing journey along with the Appellant in a train, during that period, the Appellant had threatened her and, therefore, she did not make any complaint against him in the train to any of the co-passengers. From her above admissions, it is established that there was a love relationship between her and the Appellant since the time of their schooling and both stayed together at different places, i.e., Jharkhand, Bihar and Punjab for total about 5 months and thereafter she was taken back from Punjab by the father of the Appellant and she was recovered at Jaipur on 10.8.2015. During the said period of 5 months, she had ample opportunity to raise her voice and make a complaint against the Appellant and come out of his clutches, but she did not do so. From her above conduct, it is clear that she was a consenting party and she herself joined the company of the Appellant.

9. With regard to age of the prosecutrix (PW3), the entries of Dakhil Kharij Register (Ex.P21C) are available on record. According to the

said entries, her date of birth is 28.4.1999 and she was admitted in the school on 9.8.2005 in 1st standard. The said entries are proved by Kashiram Chandra (PW13), Principal of Sanskar Bharti Higher Secondary School, Jaijaipur. Though this witness admitted that the entries of admission of the prosecutrix in the school are not in his own handwriting and he does not know who had brought the prosecutrix to the school, Tankor Narayan (PW4), father of the prosecutrix stated that he himself had taken the prosecutrix to the school for her admission and he had got the correct entry of her date of birth registered in the school.

10. In (2013) 7 SCC 263 (**Jarnail Singh v. State of Haryana**), it is held by the Supreme Court that for determination of age of the victim girl, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 needs to be referred. It is held as under:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

“12. Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the

juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the

case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

11. On examination of the present case in the light of the above view taken by the Supreme Court, I find that the entries of Dakhil Kharij Register (Ex.P21C) are available on record regarding the age of the prosecutrix. The entries are of the time of admission of the prosecutrix in the school in 1st standard and the same were got registered by Tankor Narayan (PW4), father of the prosecutrix. I do not find any reason to disbelieve his statement.
12. Since the four cases relied upon by Learned Counsel appearing for the Appellant are distinguishable on facts and they do not make any reference to the Juvenile Justice (Care and Protection of Children) Rules, 2007, I am of the view that the said cases are not relevant for the purpose of determination of age of the prosecutrix.

13. Apart from that, in her Court statement also, the prosecutrix (PW3) deposed that at the time of incident, she was studying in 10th standard and her date of birth is 28.4.1999. Her parents, i.e., mother Anita Chandra (PW2) and father Tankor Narayan (PW4) also deposed that the prosecutrix (PW3) was aged about 16 years. Their above statement is not duly rebutted during their cross-examination. Simmi Chandra (PW7), younger sister of the prosecutrix, who stated her age to be 14 years, categorically deposed that the prosecutrix is 2 years older than her. Her statement is also not duly rebutted during her cross-examination.
14. From the above documentary and oral evidence led by the prosecution, it is well established that at the time of incident, the prosecutrix was aged about 16 years and 4 months. As discussed above, since her age was below 18 years at the time of incident, her consent cannot be considered to be a valid consent. Therefore, the conviction of the Appellant is in accordance with the evidence led by the prosecution. I do not find any merit in the appeal.
15. Consequently, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
JUDGE