

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 814 of 2016

- Sarvan, S/o Manbahal, Aged About 25 Years, Caste Lohar, R/o Village Rangola, Dumartoli, P.S. Jashpur, District Jashpur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Jashpur, District Jashpur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri N.S. Dhurandhar and Shri Praveen Dhurandhar, Advocates.
For State/Respondent	:	Shri Ravi Maheshwari, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

28/07/2021

1. This appeal has been preferred against the impugned judgment dated 25/01/2016 passed in Special Case No.07/2015 by the Special Judge (Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act), Jashpur, District – Jashpur, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
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U/s 366 (A) of the I.P.C.	R.I. for 6 years and fine of Rs.3,000/- with default stipulations.
U/s 376 (2) of the I.P.C.	R.I. for 8 years and fine of Rs.4,000/- with default stipulations.
U/s 4 of POCSO Act,	R.I. for 8 years and fine amount of Rs.4,000/- with default stipulations.
All sentences to run concurrently.	

2. In the present case, age of the prosecutrix at the relevant time was about 15 years and 7 month. As per the entries made in the *Dakhil Kharij panji*, date of birth of the prosecutrix (PW-1) is 28.04.1999. Date of incident is 09.11.2014. According to case of the prosecution, on 09.11.2014 at about 9:00 PM, prosecutrix went out of her house to answer call of nature and on the relevant point of time, present appellant came there and caught hold of her hands and dragged her to a rocky place of the village and against her will, he committed forcible sexual intercourse with her. Further on 09.11.2014 to 14.11.2014, appellant kept the prosecutrix along with him by threatening her to life. On non-returning of the prosecutrix, the mother of the prosecutrix search her and on relevant time, friend of the prosecutrix informed her that she has seen her going out of village along with appellant. Thereafter, matter was reported by mother of the prosecutrix and on the basis of the said, a missing report was lodged. During inquiry on 14.11.2014, prosecutrix was recovered from the possession of the appellant. Statement of the prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. Thereafter, F.I.R. vide Ex.P-5 was registered. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has

examined as many as 15 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded his innocence and false implication in the matter.

3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Shri Praveen Dhurandhar, learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that on perusal of the statement of the prosecutrix, it is well-established that prosecutrix was the consenting party in the alleged act and she herself had left her house and stayed with the appellant for about three days. There is no conclusive and clinching evidence available on record on the basis of which it can be said that at the time of incident, age of the prosecutrix was below 18 years. Also, the author of the entries of date of birth made in *Dakhil Kharij panji* has not been examined before the trial Court, therefore, entries made in *Dakhil Kharij panji* is also suspicious. Since, prosecutrix was the consenting party and there is no conclusive evidence available on record which shows that at the time of incident, age of the prosecutrix was below 18 years, conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing for the parties, perused the record, statement of the witnesses and other annexed documents minutely.
7. With regard to the age of the prosecutrix (PW-1), Mele Tigga (PW-9), Head Master of the school has deposed according to the entries made in *Dakhil Kharij Panji* i.e. Ex.P-21 where date of birth of the prosecutrix is mentioned as 28.04.1999. Though, he has admitted the fact that the said handwriting in *Dakhil Kharij panji* is not similar to his handwriting, but he deposed that at the relevant time, he was posted as the Incharge Principal and the said entries were made by his subordinates. Prosecutrix (PW-1) in her Court statement has deposed that at the time of incident, her age was about 15 years. Mother of the prosecutrix namely Lahiri Bai (PW-2) in her Court statement has deposed that at the time of incident, age of her daughter was about 16 years and was studying in class 10. Statement of above both witnesses were not duly rebutted during their cross-examination. Therefore, looking to the documentary evidence i.e. entries made in *Dakhil Kharij Panji* as well as oral statement of prosecutrix (PW-1) and and her mother Lahari Bai (PW-2), it is well-established that at the relevant time, age of the prosecutrix was below 18 years. Thus, findings of the trial Court with regard to age of the prosecutrix is in accordance with the evidence available on record.
8. With regard to the alleged incident, prosecutrix (PW-1) in her Court statement has supported the entire case of the prosecution and deposed accordingly. She has categorically stated that on the date of incident at about 9-10 P.M., when she went out to answer the call of

nature, at that time, appellant came there and caught hold her hand, took her with him and committed sexual intercourse with him. She further deposed that appellant also kept her with him for about 3 days. On perusal of her cross-examination, it appears that there was love relationship between appellant and prosecutrix and she herself had left her house and stayed with appellant for 3 days but as mentioned above, at the time of alleged incident, she was below 18 years of age and therefore, her consent in this regard is not liable to be a legal consent.

9. On a minute examination of the evidence on record, it is clear that there is sufficient evidence available on record against the appellant to hold him guilty. In my considered view, the trial Court has rightly convicted the appellant.
10. Consequently, the appeal has no merit and is, therefore, dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**