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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.200 of 2014

Judgment Reserved on : 1.2.2021

Judgment Delivered on : 3.3.2021

Tikaram Verma, Son of Late Sonu Ram Verma, Aged about 29 years,
R/o Arjuni, P.S. Bhatapara Gramin, District Baloda Bazar, Bhatapara,
Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through P.S. Bhatapara Gramin, District Baloda
Bazar, Bhatapara, Chhattisgarh

--- Respondent

Criminal Appeal No.212 of 2014

Yogesh Kumar Verma, S/o Chandreshwar Verma, Aged about 25
years, R/o Police Station Nevra, District Raipur, Chhattisgarh, At
preset R/o Oriental Colony Rawan, Police Station City Kotwali, Civil
and Revenue District Balodabazar-Bhatapara, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through the Police Station Bhatapara Rural,
Civil and Revenue District Balodabazar-Bhatapara, Chhattisgarh

--- Respondent

and

Criminal Appeal No.448 of 2019

1. Laxmi Meena @ Sukbai @ Sukariya, W/o Gulab @ Ramdayal Verma,
Aged about 45 years, R/o Madaseel, P.S. Sanmathura, Civil and
Revenue District Dhaulpur, Rajasthan
2. Banwari Meena, S/o Late Kalyan Singh Meena, Aged about 30 years,
R/o Meena Colony, Karauli, P.S. Karauli, Civil and Revenue District
Karauli, Rajasthan

---- Appellants

versus

State of Chhattisgarh through S.H.O., P.S. Bhatapara Grameen, Civil
and Revenue District Baloda Bazar-Bhatapara, Chhattisgarh

--- Respondent

For Respective Appellants : Shri C.R. Sahu, Shri Goutam Khetrapal and
Shri Pragalbha Sharma, Advocates

For Respondent/State : Shri H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since all the appeals arise out of a common sessions trial, they are decided by this common judgment.

2. Criminal Appeal No.200 of 2014 has been preferred by Appellant Tikaram Verma against judgment dated 12.2.2014 passed by the Additional Sessions Judge, Bhatapara in Sessions Trial No.29 of 2013. Criminal Appeal No.212 of 2014 has been moved by Appellant Yogesh Kumar Verma against judgment dated 12.2.2014 passed by the Additional Sessions Judge, Bhatapara in Sessions Trial No.29 of 2013. Criminal Appeal No.448 of 2019 has been filed by Appellants Laxmi Meena @ Sukbai @ Sukariya and Banwari Meena against judgment dated 28.1.2019 passed by the Additional Sessions Judge, Bhatapara in Sessions Trial No.H-29 of 2013.

3. By the judgments under challenge, the Appellants have been convicted and sentenced as under:

<u>Appellants</u>	<u>Conviction</u>	<u>Sentence</u>
Tikaram Verma	Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.2000/- with default stipulation
	Under Section 372 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000/- with default stipulation
Yogesh Kumar Verma	Under Section 372 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000/- with default stipulation

Laxmi Meena @ Sukbai @ Sukariya	Under Section 370(4) read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000/- with default stipulation
Banwari Meena	Under Section 370(4) read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000/- with default stipulation

4. According to the case of prosecution, 6 years prior to 16.8.2013, the victim/prosecutrix (PW1), a minor girl was taken away by Appellant Tikaram saying that her brother Pawan (PW4) had called her. He took her to Village Sanmathura, District Dhaulpur, State of Rajasthan. There Appellant Laxmi Meena kept her at her house for 2 days. Thereafter, the prosecutrix was left at the house of Appellant Banwari Meena. Thereafter, Appellant Banwari sold the prosecutrix to Appellant Laxmi Meena. Allegedly, Appellant Tikaram accompanied by Appellant Yogesh Kumar Verma had came to take the amount of sale consideration from Appellant Laxmi Meena. It is alleged that the prosecutrix stayed at the house of Appellant Laxmi Meena for about 2 years and Appellant Laxmi Meena put her in the profession of prostitution. Thereafter, the prosecutrix met Hakim (PW2). Hakim (PW2) performed marriage with the prosecutrix. Allegedly, Appellants Laxmi and Banwari had taken Rs.50,000/- from Hakim (PW2) also. Thereafter, the prosecutrix lived happily with Hakim (PW2). Thereafter, in a marriage ceremony, the prosecutrix met with a person, namely, Raj Verma (not examined by the prosecution), resident of State of

Chhattisgarh. The prosecutrix gave her mobile number to Raj Verma and she also asked him to arrange her talk with her family members after his return to Chhattisgarh. Raj Verma returned to Chhattisgarh and met with the family members of the prosecutrix and arranged their telephonic talk with the prosecutrix. On 4.7.2013, Daduram (PW3) and Pawan (PW4), maternal uncle and brother of the prosecutrix, respectively went to Rajasthan and brought the prosecutrix back to their house at Village Arjuni, State of Chhattisgarh. Thereafter, a written complaint (typed) (Ex.P1) was lodged by the prosecutrix (PW1). On the basis of Ex.P1, First Information Report (Ex.P4) was registered. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. After an investigation, declaring Appellants Laxmi Meena and Banwari Meena, a charge-sheet was filed against Appellants Tikaram Verma and Yogesh Kumar Verma. The Trial Court framed charges against Appellants Tikaram and Yogesh under Sections 363 and 372 of the Indian Penal Code.

5. To bring home the offence, the prosecution examined as many as 5 witnesses. Statement of Appellants Tikaram and Yogesh were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
6. On completion of the trial, the Trial Court, vide judgment dated 12.2.2014, convicted and sentenced Appellants Tikaram and Yogesh as mentioned in 3rd paragraph of this judgment.

7. During pendency of the criminal appeals filed by Appellants Tikaram and Yogesh, accused/Appellants Laxmi Meena and Banwari Meena arrested. The Trial Court framed charges under Sections 363, 372 and 373/34 of the Indian Penal Code against accused/Appellants Laxmi and Banwari and trial was conducted against them. The prosecutrix (PW1), Hakim (PW2), Daduram (PW3) and K.P.Jagat (PW5) were re-examined and re-cross-examined. Pawan (PW4) did not appear before the Trial Court for cross-examination. In examination under Section 313 of the Cr.P.C., Appellants Laxmi and Banwari denied the guilt and pleaded false implication. No witness has been examined in their defence.
8. On completion of the trial against Appellants Laxmi and Banwari, vide judgment dated 28.1.2019, the Trial Court, instead of convicting them under Sections 363, 372 and 373/34 of the Indian Penal Code, convicted them under Section 370(4) read with Section 34 of the Indian Penal Code and sentenced them as mentioned in 3rd paragraph of this judgment.
9. Learned Counsel appearing for the respective Appellants jointly submitted that without there being any clinching and sufficient evidence on record, the Trial Court has wrongly convicted the Appellants. It was submitted that there is no evidence on record on the basis of which it could be said that at the time of incident the victim was below 18 years of age. Therefore, conviction of the Appellants are not sustainable. It was submitted that the entire story narrated by the victim is suspicious and not reliable. The

matter was reported after 6-7 years of the incident. Prior to that she had ample opportunity to lodge a report or made complaints to other persons, but she did not do so. It was further submitted that there are material contradictions and omissions in the statement of the victim. In both the rounds of trial, she had made totally contradictory statements, particularly, at the time of second round of trial, in examination-in-chief, she has supported the case of the prosecution, but at the time of cross-examination she has deposed totally contradictory and has supported the case of the defence. Therefore, her deposition is not reliable and she is not a credible witness. It was further argued on behalf of Appellants Laxmi Meena and Banwari Meena that no charge was framed against these two Appellants under Section 370(4) of the Indian Penal Code, but they have been convicted thereunder by the Trial Court which is not legal. It was further submitted that the Trial Court has convicted both these Appellants Laxmi and Banwari on the basis of the statements made in the first round of trial which is not legal.

10. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellants and supported the impugned judgments.
11. I have heard Learned Counsel appearing for the parties and perused the entire material available on record including the statements made by the witnesses before the Trial Court in both rounds of trial.
12. First, I shall consider the issue of age of the prosecutrix. It is not in

dispute that the written complaint (Ex.P1) was lodged on 11.7.2013, i.e., after 6 years of the incident. The written complaint does not contain age or date of birth of the victim/prosecutrix. No single documentary evidence is available on record regarding date of birth of the prosecutrix. During first round of trial, the prosecutrix (PW1) has deposed that at the time of incident, she was aged about 15 years. In the second round of trial, she has deposed that at the time of incident she was aged about 8-9 years. During cross-examination, particularly, in paragraph 9, though she has denied the suggestion that her age at the time of incident was about 18-19 years, she has admitted the fact that she was not aware of her date of birth. She has also admitted that she had deposed her estimated age based on the information gathered from her maternal grand parents. Her maternal grand father and mother have not been examined by the prosecution. Daduram (PW3), maternal uncle of the prosecutrix and Pawan (PW4), brother of the prosecutrix, in their Court statements have not stated anything regarding date of birth or age of the prosecutrix. Thus, it is clear that except the statement of the prosecutrix, there is nothing on record regarding her date of birth or age. Even the prosecutrix has stated her estimated age and she has also not been able to state her date of birth. Therefore, the finding of the Trial Court that at the time of incident, the prosecutrix was below 18 years of age is not in accordance with the evidence available on record.

13. With regard to the incident, the prosecutrix (PW1), during first round of trial, has deposed that on the date of incident she was alone at

her house. Her parents had gone to agricultural field. Appellant Tikaram Verma came to her and saying that her brother Pawan (PW4) was working at Dhamtari (Chhattisgarh) and food for him was needed to be cooked took her with him. She has further deposed that Appellant Tikaram took her to bus stand and there he gave her breakfast. Thereafter, he took her to railway station. She sat in a train in which she slept. Next day, at 11 a.m., they reached to Dhaulpur Railway Station in Rajasthan. From there, Appellant Tikaram took her to Village Sanmathura (Rajasthan) at the house of Appellant Laxmi Meena. At her house, she stayed for 2 days. Thereafter, Appellants Tikaram and Laxmi took her to Appellant Banwari Meena. According to this witness, Appellants Tikaram and Laxmi sold her to Appellant Banwari. Thereafter, Appellant Tikaram returned with half of the sale consideration and Appellant Yogesh came later to take the remaining amount of the sale consideration. She has further deposed that thereafter she was taken from the house of Appellant Banwari to the house of Appellant Laxmi. Appellant Laxmi forcibly put her into the profession of prostitution. She has further deposed that 1 year thereafter Hakim (PW2) came to her. On her request to take her out from there, Hakim (PW2) took her away with him. Thereafter, she, at her own will, performed marriage with Hakim (PW2). She has further deposed that 5-6 years thereafter, one day, she had gone to visit a fair with her family members. There she met with one Rajeshwari and Raj Verma both residents of State of Chhattisgarh. According to this witness, she gave her mobile number to Raj Verma and asked him to arrange her talk with her

maternal uncle living in Village Arjuni in Chhattisgarh. Raj Verma returned to Chhattisgarh and arranged her talk with her maternal uncle. Thereafter, her maternal uncle and her brother came to her at Rajasthan and took her back to their Village Arjuni (Chhattisgarh). Thereafter, the written complaint (Ex.P1) was lodged. In second round of trial, this witness has deposed that Appellant Tikaram took her to the house of Appellant Laxmi. Thereafter, Appellant Tikaram took her to the house of Appellant Banwari. Thereafter, Appellant Tikaram sold her to Appellant Laxmi and returned. She has further deposed that Appellants Laxmi and Banwari were arranging persons to sell her. In paragraph 10 of first round of trial, she has admitted that she was not aware that what was written in the written complaint (Ex.P1). According to this witness, Ex.P1 was got typed by one news correspondent, namely, Balgovind, who had also come with her to the Court on the date of her examination. She has further deposed that Balgovind had told her that as was written in the written complaint (Ex.P1) so was to be deposed by her in the Court. In paragraph 13 of her cross-examination, she has further admitted that during her stay in Rajasthan for a period of about 6 years, she did not make any complaint to anyone nor did she lodge any report in Rajasthan. In second round of trial, during cross-examination in paragraphs 4, 5 and 6, she has admitted that she was not aware what talks were taking place among Appellants Tikaram, Laxmi and Banwari and no transaction of money took place in her presence. She has further admitted that during her stay in Rajasthan, she lived happily and a love affair also developed with Hakim (PW2)

and thereafter she also performed marriage with Hakim. She has further admitted that she stayed with Appellant Laxmi for about 6 months and during that period many persons met with her and a police station was also situated near the house of Appellant Laxmi, but she did not make any complaint to anyone. In paragraph 7, she has further deposed that Appellant Laxmi was taking care of her as her daughter and according to this witness Appellant Banwari also did not do any wrong with her.

14. Hakim (PW2) has only deposed that the prosecutrix was working in the tea shop of Appellant Laxmi. He met with the prosecutrix there and on her request he took her out from there and thereafter he performed marriage with her. According to this witness, the prosecutrix told him that Appellant Laxmi had brought her there. This witness has further deposed that while taking out the prosecutrix from the house of Appellant Laxmi, he did not face any resistance from Appellant Laxmi. During second round of trial, this witness has not stated anything against any of the Appellants. He has been declared hostile.
15. Daduram (PW3) and Pawan (PW4), maternal uncle and brother of the prosecutrix, respectively are hearsay witnesses. Both have admitted the fact that they never made any report of missing of the prosecutrix.
16. Assistant Sub-Inspector K.P. Jagat (PW5) is the witness who investigated into the offence in question.

17. On a minute examination of the above statements of the witnesses, it is clear that the written report (Ex.P1) was lodged after about 6 years of the incident. As admitted by the prosecutrix (PW1), the complaint (Ex.P1) was got typed by one news correspondent Balgovind, who had also come with her to the Court on the date of her examination and he had guided her that as was written in the complaint (Ex.P1) so was to be deposed by her in the Court. There are material contradictions and omissions in the statement of the prosecutrix (PW1). Her statement has been totally contradictory in both the rounds of trial. In her cross-examination recorded in second round of trial, she has deposed totally in favour of the Appellants. Looking to her contradictory statement recorded in both the rounds of trial, her entire statement is suspicious. She does not appear to be a credible witness. From her admissions, it also appears that she had ample opportunity available with her during her stay with Appellant Laxmi in the initial one year, but she did not make any complaint to anyone nor did she try to contact with her family members living in Chhattisgarh. Thereafter, she performed marriage with Hakim (PW2) and lived with him for about 5 years, but despite having ample opportunity even during this period, she did not make any complaint to anyone nor did she try to contact with her family members. There is also no evidence on record to show that Appellant Laxmi was running profession of prostitution at her house. Had it been so, many witnesses would have been available to the prosecution from nearby the house of Appellant Laxmi for examination. But, no such witness has been cited or examined by the prosecution. There is also no clinching

evidence available on record to show that the prosecutrix was sold by Appellant Tikaram to Appellant Laxmi and thereafter by Appellant Laxmi to Appellant Banwari and thereafter by Appellant Banwari to Appellant Laxmi. As discussed above that at the time of incident age of the prosecutrix was below 18 years is also not established. Considering the totality of the case and the evidence adduced by the prosecution, the alleged offences under Sections 363, 372 and 370(4) read with Section 34 of the Indian Penal Code are not proved beyond reasonable doubt against any of the Appellants. Looking to the evidence of the prosecution, the Appellants are entitled to get benefit of doubt.

18. Consequently, the appeals are allowed. The judgments under challenge are set aside. The Appellants are acquitted of the charges framed against them.

Sd/-
(Arvind Singh Chandel)
JUDGE