

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.170 of 2015**

Judgment Reserved on : 2.8.2021

Judgment Delivered on : 17.8.2021

Raj Yadav @ Ashish Yadav, S/o Shri Brijlal Yadav, aged about 19 years, R/o Village Chechrabhata, P.S. Nayapara, Civil and Revenue District Nayapara (Odisha)

**---- Appellant**

**versus**

State of Chhattisgarh through Police Station Khamtarai, District Raipur, Chhattisgarh

**--- Respondent**

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For Appellant : Shri Govind Ram Miri, Senior Advocate with  
Shri K.R. Nair, Advocate  
For Respondent : Shri H.S. Ahluwalia, Dy. Advocate General  
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**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. JUDGMENT**

1. This appeal has been preferred against judgment dated 17.10.2014 passed by the Additional Sessions Judge, F.T.C., Raipur in Sessions Trial No.26 of 2013, 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 3 years and fine of Rs.200 with default stipulation   |
| Under Section 366 of the Indian Penal Code | Rigorous Imprisonment for 5 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.1000 with default stipulation |

|                                                                                                           |                                                                                 |
|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act') | Rigorous Imprisonment for 10 years and fine of Rs.1000 with default stipulation |
|                                                                                                           | All the jail sentences are directed to run concurrently                         |

2. According to the prosecution story, at the relevant time, prosecutrix (PW1) was below 18 years of age and as per entries of Dakhil Kharij Panji her date of birth is 7.7.1997. The date of incident is 13.7.2013. On 13.7.2013 Manharanlal, father of the prosecutrix lodged a report against the Appellant stating therein that the Appellant was old acquainted with him and he had told him that he was employed in G.R.P. On 11.7.2013 the Appellant came to his house in the night and stayed. On 12.7.2013 after seeing the prosecutrix he told that he will get her employed in traffic police. Thereafter, the Appellant took him and the prosecutrix on his motorcycle to W.R.S. Colony, Raipur. There the Appellant told him that he is to get the prosecutrix measured and thereafter he took her on his motorcycle but did not return. On the basis of the said report, First Information Report (Ex.P14) was registered. During the course of investigation, on 16.8.2013 the prosecutrix was recovered from the possession of the Appellant. Statements of the prosecutrix and other witnesses were recorded under Section 161 Cr.P.C. On completion of investigation, charge-sheet was filed. Charges were framed by the Trial Court.
3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statement of the Appellant was also recorded under

Section 313 of the Cr.P.C. 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 1<sup>st</sup> paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Appellant has been falsely implicated in this case. From perusal of the statements of the prosecutrix (PW1) and Tulsi (PW3) it appears that the prosecutrix was a consenting party and she voluntarily went along with the Appellant. From the statement of the prosecutrix it is also established that both the Appellant and the prosecutrix stayed together at different places for about 1 month but she did not make any complaint against the Appellant at any place. Virtually, at all the places they introduced themselves as husband and wife. Therefore, it is well established that the prosecutrix was a consenting party. With regard to the age of the prosecutrix, it was argued that there is no clinching or reliable evidence both oral and documentary on the basis of which it can be said that the prosecutrix was below 18 years of age. Therefore, conviction of the Appellant 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 record of the Trial Court including statements of the witnesses and other material.

8. With regard to the incident in her Court statement the prosecutrix (PW1) deposed that the Appellant had come to her father and stayed at their house in the night. Next day after seeing her the Appellant told that she can get job in police. Thereafter, he took her and her father on his motorcycle to W.R.S. Colony, Raipur. There he made her father stepped down from the motorcycle and telling that a girl namely Priti will take her measurement took her away on his motorcycle. Her above statement is corroborated by her father Manharanlal (PW8). According to Manharanlal (PW8), when the prosecutrix did not return he lodged a missing report. He further deposed that 1 month thereafter the Appellant gave him a telephonic call and told him that he and the prosecutrix were at Orissa and were living happily.
9. The prosecutrix (PW1) further deposed that after leaving her father the Appellant telling that they have to go to Village Chechrabhata took her on his motorcycle and on the way he committed forcible sexual intercourse with her in a jungle. Thereafter he took her to the house of his sister at Village Chechrabhata. He kept her there for about 15-20 days. He continued to commit sexual intercourse with her there during that period. Thereafter he took her to Raipur. There he took her to agarbatti factory. There he searched for a rented house. Thereafter he took her to the house of his relative Tulsi. There he telling that he will return left her and went away. There on getting opportunity she gave a telephonic call to her

father. Her father reached there with police. During her cross-examination, this witness admitted that even after committing rape by the Appellant with her in the jungle she went along with him to Village Chechrabhata. On the way she did not try to shout or come out of his clutches. She further admitted that at Village Chechrabhata for attending the call of nature she went out of the house of the sister of the Appellant but there she did not make any complaint to any person that she was raped by the Appellant and she also did not try to come out of his clutches and run away from there. In paragraph 16, she further deposed that from Village Chechrabhata the Appellant took her to Village Jara at the house of his relative. They stayed there for 3-4 days but there also she did not make any complaint to any person. She further admitted that thereafter she came to Raipur along with the Appellant. To the agarbatti factory also she had gone along with the Appellant but there also she did not make any complaint. She further admitted that Tulsi (PW3) had made them available a rented house at Raipur but there also she did not make any complaint. Tulsi (PW3) also deposed that the Appellant and the prosecutrix had come to him and both had told him that they have performed marriage and were in search of a rented house.

10. On a minute examination of the statement of the prosecutrix (PW1) it is clear that she was a consenting party and she herself left the company of her father and went away along with the Appellant because she had got ample opportunities to come out of the clutches of the Appellant and run away but she did not do so.

Rather, she visited different places and stayed along with the Appellant and she did not even try to shout at those places. To Tulsi (PW3), they introduced themselves as husband and wife. 1 month after the incident, the Appellant himself informed to the father of the prosecutrix that they were living at Orissa happily. Thus, it is clear that the prosecutrix was a consenting party and she herself joined the company of the Appellant.

11. With regard to the age of the prosecutrix in her Court statement she stated that her age was 16 years and her date of birth is 7.7.1997. on that basis she stated her date of birth to be 7.7.1997 has not been disclosed by her. Her father Manharanlal (PW8) also deposed that age of the prosecutrix was about 16 years but he could not state her date of birth because he could not remember it. He also deposed that he did not know even his own date of birth. In paragraph 7, he further deposed that he had got date of birth of the prosecutrix registered in Kotwari Panji but the police did not seize the said panji. According to the entries of Dakhil Kharij Panji (Ex.P18C), the date of birth of the prosecutrix is 7.7.1997. This entry was recorded by Headmaster Vijay Singh Thakur (PW10). In his deposition he admitted that he recorded the said entry of the date of birth of the prosecutrix on the basis of the mark-sheet and transfer certificate of primary school.
12. On a minute examination of the above evidence with regard to the age of the prosecutrix, it is also clear that Manharanlal (PW8), father of the prosecutrix did not even know his date of birth and he could also not state date of birth of the prosecutrix. Though

Manharanlal (PW8) and the prosecutrix (PW1) both have stated age of the prosecutrix to be 16 years, on what basis they stated so has not been made clear. As stated by Manharanlal (PW8), date of birth of the prosecutrix was got recorded in the Kotwari Panji, but the said panji has not been seized by the police. In Dakhil Kharij Panji also, entry of date of birth of the prosecutrix has been made on the basis of the mark-sheet and transfer certificate of the primary school. The record in which the entry which was got registered in the primary school with regard to date of birth of the prosecutrix has not been produced by the prosecution. Therefore in my considered view the prosecution has not been able to prove that the prosecutrix was below 18 years of age at the time of incident. As discussed above, since the prosecutrix was a consenting party, she herself joined the company of the Appellant and the prosecution has failed to prove that at the time of incident she was below 18 years of age, the conviction imposed upon the Appellant is not sustainable.

13. Consequently, the appeal is allowed. The conviction and sentence imposed upon the Appellant are set aside and he is acquitted of all the charges framed against him. He is reported to be in jail. He be set at liberty forthwith.

Sd/-  
(Arvind Singh Chandel)  
JUDGE