

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.183 of 2015

Judgment Reserved on : 26.8.2021

Judgment Delivered on : 17.9.2021

Raju @ Narottam Mandle, son of Mangal Ram Mandle, aged about 20 years, residnet of Choubey Bandha, P.S. Rajim, civil District Raipur and Revenue District Gariyaband, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Gobra Nawapara, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Appellant : Shri Devesh G. Kela, Advocate
For Respondent : Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 31.1.2015 passed by the Additional Sessions Judge (FTC), Raipur in Sessions Trial No.151 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(2)(ढ) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1000 with default stipulation
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for 10 years and fine of Rs.1000 with default stipulation

(henceforth 'the Pocso Act')	
	All the jail sentences are directed to run concurrently

2. According to the prosecution case, at the relevant time, age of the prosecutrix (PW2) was about 15 years and 4 months. According to the entries of birth certificate (Article A), her date of birth is 10.12.1997. The date of incident is 21.2.2013. On 21.2.2013, the Appellant met with the prosecutrix and saying that he will perform marriage with her demanded her school transfer certificate. She gave her mark-sheet. Thereafter, the Appellant took her on his motorcycle to Village Tumgaon at the house of his sister. It is the further case of the prosecution that before that the Appellant committed sexual intercourse with her 3 times saying that he will marry her. On 24.2.2013, the Appellant left her at Village Tumgaon and returned alone. On 25.2.2013, she went to Village Nawapara and roamed there in a fair. There Nakul met with her and took her to police station. There she lodged a report (Ex.P2) against the Appellant. Statements of the prosecutrix and other witnesses were 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 10 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 clinching and sufficient evidence on record. There are material contradictions and omissions in the statement of the prosecutrix. Her entire conduct is suspicious. Therefore, on the basis of her statement, conviction of the Appellant is not sustainable. It was further argued that even if the entire case of the prosecution is taken as it is, it appears that the prosecutrix was a consenting party and she herself joined the company of the Appellant. There is no conclusive evidence on record on the basis of which it could be said that age of the prosecutrix was below 18 years. Therefore also, 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 minutely perused the record of the Trial Court including the statements of the witnesses.
8. First, I shall discuss about age of the prosecutrix (PW2). Only one document, i.e., birth certificate (Article A) of the prosecutrix is available on record with regard to her age in which her date of birth

is mentioned as 10.12.1997 and her birth was registered on 4.12.2002. Who got the said date of birth registered, there is no evidence on record. The certificate (Article A) was seized from Girdharlal (PW3), father of the prosecutrix. In his examination-in-chief before the Court, Girdharlal (PW3) deposed that age of the prosecutrix was 17 years, but he stated that he was not aware of her date of birth. During cross-examination also, he admitted that he did not recollect his date of marriage and date of birth of the prosecutrix. In paragraph 8 of his cross-examination, he categorically admitted that in the school, date of birth of the prosecutrix was mentioned as 10.12.1994. According to this witness, the prosecutrix was got admitted in the school by his wife, but she is not an educated person and she got the date of birth of the prosecutrix registered in the school on her surmises. But, the prosecution has not collected any document from the school and submitted before the Court. In her Court statement, the prosecutrix (PW2) deposed that her date of birth is 5.2.1996. In paragraph 5 of her cross-examination, she admitted that she was not aware of her date of birth. Again in paragraph 10 of her cross-examination, she deposed that in the school record, her date of birth is mentioned as 5.2.1996. She categorically admitted that her date of birth is not 10.12.1997.

9. On a minute examination of the above evidence, it appears that there is no conclusive evidence available on record regarding actual date of birth of the prosecutrix. Though according to Article A, birth certificate of the prosecutrix, her date of birth is 10.12.1997,

who got this entry registered there is no evidence on record. Even this entry was got registered after 5 years of her birth. Girdharlal (PW3), father of the prosecutrix himself admitted that in the school record, date of birth of the prosecutrix is registered as 10.12.1994, whereas according to the prosecutrix, her date of birth recorded in the school register is 5.2.1996. No school record has been produced before the Trial Court by the prosecution to show date of birth of the prosecutrix. Her father Girdharlal (PW3) was unable to state her actual date of birth. Looking to the entire evidence adduced by the prosecution, in my considered view, the prosecution has failed to prove that at the time of incident, the prosecutrix was below 18 years of age. Therefore, the finding of the Trial Court in this regard is not acceptable.

10. With regard to the incident, in her Court statement, the prosecutrix (PW2) deposed that she was acquainted with the Appellant from before. On the date of incident, he saying her that he will marry her took her to Village Tumgaon on his motorcycle where he kept her at the house of his relative for 3 days and he also committed sexual intercourse with her there. She further deposed that after 3 days when she came to know that he was trying to sell her, she fled from there and came to Village Nawapara by a bus. There she roamed in a fair for the whole night. Next day, in the morning, she came to Village Nawagaon where Nakul (not examined) met with her. He took her to police station where she lodged the report. In paragraph 5 of her cross-examination, she deposed that she did not go to Village Tumgaon along with the Appellant on his

motorcycle, but she went there along with sister-in-law of the Appellant, namely, Mamta (not examined) by a bus. Again, there is a contradictory statement given by her in paragraph 7 that she went to Village Tumgaon along with the Appellant on his motorcycle. There is a further contradiction in paragraph 8 of her statement that she went to Village Tumgaon along with Mamta, sister-in-law of the Appellant. Confirming this fact again, in paragraph 13, she categorically admitted that the Appellant had not taken her to Village Tumgaon on his motorcycle. As per the Court statement of the prosecutrix, the Appellant had committed sexual intercourse with her at Village Tumgaon for 3 days. In paragraph 8 of her cross-examination, she categorically admitted that nothing so had happened at Village Tumgaon. Rather, before going to Village Tumgaon, she had stayed at Mahasamund at the house of the Appellant where the wife and sister-in-law of the Appellant were also present. Meaning thereby, the prosecutrix was fully aware of the fact that the Appellant was already married and his wife was also living with him. Therefore, the statement of the prosecutrix that on a false pretext of marriage, the Appellant took her away along with him is not reliable. Virtually, from the admission made by her, it appears that she herself had gone to Village Tumgaon along with the sister-in-law of the Appellant and as admitted by her, no physical relationship had developed between her and the Appellant at Village Tumgaon. Therefore, the whole case of the prosecution is doubtful. Even if for the sake of argument it is considered that physical relationship had developed between the Appellant and the prosecutrix, from the conduct of the prosecutrix it

appears that she was a consenting party and she herself joined the company of the Appellant. Since there is no evidence on record to show that at the time of alleged incident, her age was below 18 years, conviction of the Appellant is not sustainable.

11. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of all the charges framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE