

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 581 of 2015

- Arjun Singh Thakur, S/o Chakodilal, Aged About 32 Years, R/o Narsinghpur, P.S. Gotegaon M.P., Present Address Village Domerpali Lahrod Padav Pithora, District Mahasamund, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, S/o Through Station House Officer, Outpost Tendukona Police Station Pithora, District Mahasamud (Wrongly Mentioned as Saraypali), Chhattisgarh.

---- Respondent

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate.
For State/Respondent	:	Shri Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

07/06/2021

1. This appeal has been preferred against the impugned judgment dated 24.01.2015 passed in Special S.T. No.H-29/2014 by the Additional Sessions Judge, FTC, Special Court (POCSO) District – Mahasamund, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 363 of the I.P.C.	R.I. for 4 years and fine of Rs.500/- with default stipulations
U/s 366 of the I.P.C.	R.I. for 4 years and fine of Rs.500/- with default stipulations

U/s 6 of POCSO Act, 2012	R.I. for 10 years and fine of Rs.500/- with default stipulations
Advocate fees of Legal Aid	Rs.1500/- as the appellant was granted Legal Aid.
All sentences to run concurrently.	

2. According to the case of the prosecution, at the time of alleged incident, age of the prosecutrix was below 14 years. According to the entries of *kotwari panji*, age of the prosecutrix is 12.02.2000. On 24.06.2014 at about 1:00 PM, father of the prosecutrix lodged a report vide Ex.P-8 stating that when he and other family members returned to his house, they found that her daughter (prosecutrix) was missing from his house. On the basis of the said report, offence has been registered. Further case of the prosecution is that, appellant and prosecutrix had love relationship with each other and on various occasions, appellant committed sexual intercourse with her on pretext of marriage. On the date of incident also, on being called by the appellant, prosecutrix left her house and went to meet the appellant. There also, appellant committed sexual intercourse with the prosecutrix. Next morning prosecutrix was recovered near a tower situated at village. Her statement was recorded. She was also medically examined by the doctor. Statement of other witnesses were also recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 9 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. 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 trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. There is no evidence available regarding kidnapping of the prosecutrix. She was found at the bus stop and she herself had left her house. There are material contradictions and omissions occurred in the statement of the prosecutrix and other witnesses. From the admissions made by the witnesses, it appears that there was a dispute between father of the prosecutrix and appellant and this fact was not appreciated by the trial Court. Also, the entire prosecution story is suspicious. Therefore, 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 minutely.
7. With regard to the age of the prosecutrix (PW-1), in her Court statement she has categorically stated that her date of birth is 11.02.2000. According to the entries of the *kotwari panji* vide Ex.P-17

also, her date of birth is mentioned as 12.02.2000. Durga Prasad (PW-5), father of the prosecutrix has also stated that date of birth of her daughter (prosecutrix) is 11.02.2000. Statements of prosecutrix (PW-1) and his father Durga Prasad (PW-5) are not duly rebutted during there cross-examination. Therefore, from the statements of both the witnesses and also on the basis of the entries made in the *kotwari panji*, date of birth of the prosecutrix was below 16 years.

8. With regard to the alleged incident, prosecutrix (PW-1) has deposed that from the last 2-3 years, there was love relationship between her and the appellant. According to this witness, appellant on pretext of marriage had committed sexual intercourse with her on various occasions. She further deposed that on the date of incident, appellant came near her house and asked her to come to Pithoura in cycle. Then she reached to Pithoura tower where appellant made physical relationship with her. She further deposed that she stayed alone on the said night near the tower. On the next day, grandfather of the prosecutrix reached the spot and took the prosecutrix with him. In paragraph 4 of the examination-in-chief of the prosecutrix, she has categorically stated that, appellant used to say her that he liked her and he would marry her and then used to develop physical relationship with her. Though in paragraph 13, she has admitted the fact that neither appellant has prosposed for marriage nor asked to elope with him, but in the above, this witness has categorically stated that on the dated of incident, appellant came near her house and asked her to come to Pithoura in cycle. Then she reached to Pithoura tower where appellant made physical relationship with her and this fact was not duly rebutted during her cross-examination. Prior to the alleged incident

also, on various occasions appellant used to develop sexual relationship with prosecutrix, and this fact was also not rebutted during her cross-examination. Looking to the above, it is well-established that appellant on pretext of marriage, used to commit sexual relationship with the prosecutrix and on the date of incident also, on being asked by the appellant, prosecutrix went to Pithoura tower to meet appellant in cycle.

9. On a minute examination of the evidence on record, it is clear that there is sufficient evidence 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**