

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 435 of 2015**

Raju Prasad Jaiswal S/o Ramlal Jaiswal, aged about 26 years, R/o Balidpur, Police Station Mohammadabad, Mau (Ajamgarh) (U.P.) at present Jhankar Talkies, Jagdalpur, District Bastar (C.G.).

----Appellant**Versus**

State of Chhattisgarh through the Station House Officer, Police Station Parpa, District Bastar (C.G.)

---- Respondent

For Appellant	:	Mr. Jitendra Kumar Saxena, Advocate
For Respondent	:	Mr. Rakesh Sahu, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****25/01/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 28/02/2015 passed in Special Sessions Trial No. 03/2015 by the Additional Sessions Judge (FTC), Bastar at Jagdalpur/Special Judge (POCSO), whereby the Appellant has been convicted under Sections 363, 366 & 376 (2)(n) of the Indian Penal Code and sentenced to undergo RI for 4 years with fine of Rs. 1000/-, RI for 5 years with fine of Rs. 2000/- and RI for 10 years with fine of Rs. 3000/-, respectively, with default stipulations.
2. In this case, the age of the Prosecutrix was about 16 years 7 months at the time of incident. Her date of birth is 21/03/1998. According to the case of the prosecution on 22/10/2014, father of the Prosecutrix Suduram lodged a missing report regarding missing of his daughter. During course of inquiry, the Prosecutrix was recovered on 29/12/2014

vide recovery Panchnama Ex.P-3. Her statement was recorded and thereafter the FIR has been lodged. The Prosecutrix was medically examined by Dr. Shobharani (PW4). Her report is Ex.P-8 & P-9. Statement of Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 10 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence on record. He further submits that from the statement of the Prosecutrix, it is well established that she was the consenting party and she herself had left her house to stay with the appellant at various places. There is no clinching evidence available on record, on the basis of which it can be said that the Prosecutrix was below 18 years of age at the time of incident, therefore, the conviction of the appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that from the evidence adduced by the prosecution, it is well established that at the time of incident, the Prosecutrix was below 18 years of age, therefore, the trial Court has

rightly convicted the appellant.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statements of the Prosecutrix and other witnesses minutely.
7. In her Court statement, the Prosecutrix (PW2) has deposed that on the date of incident, she had gone to Jhankar talkies to watch Heropanti movie. There she met with the appellant first time. Thereafter, both have watched the movie. She further deposed the appellant, on the pretext of marriage, taken her in a room and committed sexual intercourse with her. The appellant kept her there for about one week. She further deposed that after one week, the appellant taken her to Raipur and from Raipur to Raurkela. There she stayed with the appellant for about 1 week. Thereafter, the appellant took her to Ajamgarh and there he committed sexual intercourse with her. Later on, the appellant took her to Raurkela and stayed there for about 2 months in a rented house. There also, the appellant made physical relationship with her. Once the appellant committed marpeet with her and thereafter he left her at Jagdalpur. In paras 20, 21 and 22, this witness has admitted the fact that she had gone with the appellant on her own will and visited Raipur, Raurkela and Ajamgarh on her own consent. She further deposed that she used to love the appellant and on her own consent, she developed physical relation with the appellant. Thus, from the above admission made by the Prosecutrix, it is clear that she was the consenting party. There was love relation between the appellant and the Prosecutrix, due to which she herself left her house and visited and stayed at various places with the

appellant, and on her consent, physical relation was developed by the appellant.

8. With regard to age of the Prosecutrix, in her Court statement, the Prosecutrix has deposed that she is aged about 16 years and her date of birth is 21/03/1998. On this point she remained firm during her cross-examination. Her elder sister Sakshi Kashyap (PW5) has also deposed that she is aged about 18 years and the Prosecutrix is her younger sister. The above statement of this witness is not duly rebutted, therefore, from the oral evidence of the Prosecutrix (PW2) and her sister Sakshi (PW5), it appears that at the time of incident the Prosecutrix was below 18 years of age.
9. R.S.P. Singh (PW1), Principal of Govt. H.S. School Bastar has also deposed that according to entry of Dakhil Kharij Panji register, the date of birth of the Prosecutrix is 21/03/1998. The statement of this witness is not rebutted during his cross-examination. Looking to the oral and documentary evidence, it is well established that at the time of incident the Prosecutrix was below 18 years of age.
10. In these circumstances, if it is admitted that the Prosecutrix was the consenting party in the alleged act, yet her consent will be treated as illegal consent. Thus, in my considered view, the trial Court has rightly convicted the appellant.
11. Accordingly, I do not find any merit in this appeal. The appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge