

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 656 of 2015

- Ravi Dewar @ Ajay, S/o Suresh Dewar, Aged About 23 Years, Occupation- Labour, R/o Ward No. 15, Bemetara, Police Station City-Kotwali, Civil and Revenue District- Bemetara, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, S/o Through- Station House Officer Bemetara, District- Bemetara, Chhattisgarh.

---- Respondent

For Appellant : Mr. Samir Singh, Advocates
For Respondent/State : Mr. Rahim Ubwani, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08.11.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.03.2015, passed by the Additional Sessions Judge, Bemetara, District- Bemetara (C.G.) in Session Case No. 53/2014, convicting the accused/appellant as under:

u/s 363 of IPC	R.I. for 3 years and fine of Rs. 500/- in default of payment of fine amount further R.I. for 1 month.
u/s 366 of IPC	R.I. for 3 years and fine of Rs. 1,000/- in default of payment of fine amount further RI for 3

	months.
u/s 376 of IPC	R.I. for 10 years and fine of Rs. 1,000/- in default of fine amount further RI for 3 months.
u/s 6 of POCSO Act	R.I. for 10 years and fine of Rs. 1,000/- in default of payment of fine amount further RI for 3 months.

2. Case of the prosecution, in brief, is that on 11.03.2014 at about 11.00 at Bemetara the appellant eloped with the prosecutrix who was below 18 years of age without permission of her lawful guardian and made forcible physical relation with her without her consent.
3. FIR was lodged by father of the prosecutrix vide Ex.P/10 on next day of incident. During investigation site map was prepared vide Ex.P/4 and panty of the prosecutrix was seized vide Ex.P/5. Vide Ex. P/1 Dakhil Kharij Register, progress report, transfer certificate were seized and vide Ex.P/8 undergarment of the appellant was seized from father of the prosecutrix. Vide Ex.P/9 vaginal slide of the prosecutrix was prepared and sealed for medical examination.
4. The Prosecutrix was recovered from the custody of the appellant in presence of witnesses. Vide Ex.P/13 prosecutrix was medically examined and according to the doctor, no opinion could be given about recent intercourse but it was

opined that she was habitual to intercourse, she was matured, her age is about 13 years and she was referred to radiologist for ascertaining her age. Vide Ex.P/14 no stains were seen in the seized underwear of the appellant and it was handed over to constable for further chemical examination. Vide Ex. P/21 appellant was examined medically and he was found capable of performing sexual intercourse. Vide Ex.P/17 accused was arrested. As per Ex. P/21 FSL report , human spermatozoa was found on the underwear & vaginal slide of the prosecutrix but it was not found on the undergarment of the appellant. Further, human sperm found on the underwear of the prosecutrix was not sufficient for serological examination. After completing investigation, charge-sheet was filed against the appellant u/s 363, 366, 376 of IPC & Sections 5, 6 POCSO Act.

5. Learned trial Court framed charges against the appellant u/s 363, 366 A, 376 & 450 of IPC & Section 6 POCSO Act and accused appellant denied the aforesaid charges and prayed for trial.
6. To establish its case the prosecution examined as many as 17 witnesses. Thereafter, statement of the accused appellant was recorded under Section 313 of CrPC where he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by the appellant in his defence.

7. Trial Court considering material available on record by the impugned judgment, convicted and sentenced the appellant as mentioned in paragraph one of this judgment.
8. Learned counsel for the appellant submits that the impugned judgment has been passed by the trial Court overlooking the material contradictions and omissions in the statements of the witnesses. Even the prosecution has failed to prove that the prosecutrix was minor at the time of incident. No cogent evidence has been aduced by the prosecution to prove that the prosecutrix was minor. Thus, the prosecution has failed to prove its case against the appellant beyond all reasonable doubt and as such the appellant deserves to be acquitted of the charges levelled against him.
9. On the other hand learned State counsel supports the impugned judgment and submits that trial Court after due appreciation of the entire oral and documentary evidence on record has rightly convicted and sentenced the appellant by the impugned judgment which needs no interference by this Court.
10. Heard learned counsel for the parties and perused the material available on record.
11. In her deposition, the prosecutrix PW-3 has categorically stated that while she was alone in her house at the time of Holi festival, the appellant came to her house, committed rape with her and took her to house of his maternal aunt where she was kept for 11 days and also subjected to forcible sexual intercourse by him. Thereafter, he brought her back to Bemetara to his house, from where she was recovered by the police. In

cross-examination, she has reiterated that the appellant committed rape with her. Though she has stated that she had gone with the appellant of her own, but she further denies that her age is above 18 years.

12. PW-5 Balraj Chauhan, father of the prosecutrix, states that when he returned from his work at around 2 pm, he did not find the prosecutrix at home and subsequently came to know that the appellant had taken away the prosecutrix on a scooty. When he went to the house of the appellant, the parents of the appellant quarreled with him. The aforesaid evidence also finds corroboration from the evidence of PW-4 Nirupa Chauhan and PW-6 Ku. Revti Chauhan, mother and younger sister of the prosecutrix. There is no contradiction in their statements and they remained firm in their cross-examination.

13. So far as age of the prosecutrix is concerned, she has stated that she is 14 years of age and denied the suggestion in cross-examination that she is above 18 years. Her mother (PW-4) and father (PW-5) have also stated that she was 13-14 years of age at the time of incident. As per seizure memo Ex.P/1, in the transfer certificate, progress report of the primary school of the prosecutrix, her date of birth is mentioned as 15.6.2002. PW-5 Smt. Geeta Sahu, Head Mistress of the primary school where the prosecutrix studied, has proved the said Dakhil-Kharij Register as well as the transfer certificate where date of birth of the prosecutrix is recorded as 15.6.2002. The said Dakhil-Kharij register was seized in presence of PW-8 Deepak Tiwari, Ward Member, vide seizure memo Ex.P/7 and he has proved the

same. His cross-examination is nil in this regard. PW-15 Dr. S. Claudius medically examined the prosecutrix vide Ex.P/13 and opined that she is 13 years of age. Her above evidence also remained uncontroverted in the cross-examination. PW-16 Dr. YR Tumbade after medical examination of the appellant found him capable of performing sexual intercourse and this witness also remained firm in cross-examination.

14. Thus, from the aforesaid unrebutted oral and documentary evidence on record, it stands proved beyond all reasonable doubt that on the date of incident i.e. 11.3.2014, the prosecutrix was below the age of 16 years, she was taken away from her lawful guardianship by the appellant and subjected to repeated sexual intercourse by him. Being so, the findings recorded by the trial Court cannot be faulted with and the same are based on just and proper appreciated of the evidence available on record
15. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. Since the appellant is in jail, no further order regarding his arrest, surrender etc. is required to be passed.

Nadim

**Sd/-
Gautam Chourdiya
Judge**