

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1097 of 2015

- Komaldas Manikpuri, S/o Galiyardas, Aged About 21 Years, Occupation- Labour/Driver, R/o Village Parsamahu, P. S. Gardhi, District- Balaghat, Madhya Pradesh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station- Taregaon Jangal, District Kabirdham, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Pawan Kumar Kashyap, Advocate.
For State/Respondent	:	Shri Ravi Maheshwari, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

23/07/2021

1. This appeal has been preferred against the impugned judgment dated 28/8/2015 passed in Special S.T. No.118/2015 by the Special Judge (POCSO), F.T.C., Kabirdham, (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.5,000/- with default stipulations.
All sentences to run concurrently.	

2. In the present case, age of the prosecutrix at the relevant time was about 15 years. According to the entries made in the Dakhil Kharij Register, date of birth of the prosecutrix (PW-8) is 07/05/2000. According to case of the prosecution, on the date of incident i.e. 01/03/2015 at about 6:00 AM, when father of the prosecutrix namely Raj Kumar (PW-9) returned after attending call of nature, he found that his daughter was missing. Thereafter, a missing report was lodged by the Raj Kumar (PW-9) i.e. father of the prosecutrix in the police station. During course of inquiry, prosecutrix was recovered from the possession of the appellant. Statement of the prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. It is alleged that appellant is a driver working at Daldali Mines. Appellant took the prosecutrix with him on pretext of marriage to Raipur and stayed there. There, he introduced the prosecutrix as his wife and committed continuous sexual intercourse with her. After completion of the

investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 12 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. From the statement of the prosecutrix, it is well-established that she was the consenting party and she herself had left her house with her own will and stayed with the appellant. He further states that there is no clinching evidence available on record on the basis of which it can be said that at the time of alleged incident, age of the prosecutrix was below 18 years. 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, statement of the witnesses and other annexed documents

minutely.

7. On perusal of the statement of the prosecutrix (PW-8), it is well-established that she and appellant both have stayed together for about one month in Raipur as wife and husband. There she introduced herself as wife of the appellant. From her statement, it is also established that, appellant committed continuous sexual intercourse with her.
8. With regard to the age of the prosecutrix, in Dakhil Kharij i.e. Ex.P-4C, date of birth of prosecutrix is mentioned as 07/05/2000. During course of investigation, ossification test of the prosecutrix i.e. Ex.P-7 is also conducted. In ossification test, age of the prosecutrix is mentioned as 15 years. In Court statement, prosecutrix (PW-8) and Raj Kumar (PW-9) father of the prosecutrix have stated that at the time of alleged incident, age of the prosecutrix was about 15-16 years. The above statement of both the witnesses is also not rebutted during their cross-examination. Thus, from the entire evidence i.e. oral and documentary, it is established that at the time of alleged incident, age of the prosecutrix was about 15-16 years. Therefore, regarding age of the prosecutrix, findings of the trial Court is based upon the evidence available on record.
9. Though from the statement of the prosecutrix (PW-8), it appears that she was the consenting party but the same should not be treated as a legal consent.
10. 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.

11. Consequently, the appeal has no merit and is, therefore, dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**

Prakash