

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 920 of 2014**

Ghanshyam Singh Porte S/o Late Mitthan Singh, aged about 30 years R/o Barendra, Police Station Rengakhar, District Kabirdham (Kawardha) (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Taregaon Jangal, District Kabirdham (C.G.)

---- Respondent

For Appellant	:	Mr. Arjit Singh, Advocate
For Respondent	:	Mrs. Dipti Shukla, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****12/03/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 11/08/2014 passed in Special Sessions Trial No. 52/2014 by the Additional Sessions Judge (Fast Track Court) and Special Judge, Protection of Children From Sexual Offences, Act 2012, Kabirdham (Kawardha) (C.G.), whereby the Appellant has been convicted under Sections 363, 366 (A) and 376 (1) of the IPC and Section 4 of the Protection of Children from Sexual Offences, Act, 2012 (henceforth 'the Act 2012') and sentenced to undergo RI for 7 years with fine of Rs. 500/-, RI for 7 years with fine of Rs. 500/-, RI for 7 years with fine of Rs. 1000/- and RI for 7 years with fine of Rs. 1000/-, respectively, with default stipulations.
2. Facts of the case are that the age of the Prosecutrix was about 17 years 3 months at the time of incident. On 23/04/2014, an FIR has been lodged by the Prosecutrix (PW2) against the appellant alleging therein that from

19/12/2013, the appellant had taken her to his house, on the pretext of marriage, and kept her there for about 2-3 days. During this period, he committed sexual intercourse with her. On the basis of the said report, FIR has been registered. Statements of the Prosecutrix and other witnesses were recorded under Section 161 of the Cr.P.C. After investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 12 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. The Prosecutrix (PW2) has turned hostile in this case and has not supported the case of the prosecution, instead thereof, the trial Court has convicted the appellant only on the basis of presumption, therefore, the conviction imposed by the trial Court is not sustainable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statements of the Prosecutrix and witnesses minutely.

7. With regard to the age of the Prosecutrix, during investigation, the police has seized a mark-sheet of class-10 of the prosecutrix i.e. Ex.P-8-a. According to the entries made therein, the date of birth is mentioned as 16/08/1996. In case of Jarnail Singh v. State of Haryana, (2013) 7 SCC 263, it has been settled by the Supreme Court that for determination of age of the Prosecutrix/Victim, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable.
8. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:-

12. Procedure to be followed in determination of Age.- (1) *In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

(2). *The Court or the Board or as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation o home or in jail.*

(3). *In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be the Committee by seeking evidence by obtaining -*

(a) (i) *the matriculation or equivalent certificates, if available; and in the absence whereof;*

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee for the reasons to be recorded by them, may if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be conclusive proof of the age as regards such child or the juvenile in conflict with law.

9. In this case, the mark-sheet of class-10th is available and according to the entries of mark-sheet, her date of birth is 16/08/1996, therefore, on the basis of said, it is well established that at the time of incident, the Prosecutrix was below 18 years of age.
10. With regard to the incident, in her Court statement, the Prosecutrix (PW2) has deposed that due to love relationship with the appellant, she herself wanted to live with the appellant, and therefore, she herself had left her

house and went to the house of the appellant. At that time the appellant told her to marry, but he did not marry with her, therefore, she made report on 22/04/2014. In para 5 of her court statement, she categorically stated that the appellant has not allured to take her, but she herself had left her house and accompanied with the appellant. Thereafter she herself left him and returned to her house. This witness has been declared hostile by the prosecution. This witness has denied the suggestion made by the prosecution that such type of intercourse was done with her. Thus, from the statement, it is well established that she has not supported the case of the prosecution in any manner. Instead thereof, the trial Court has convicted the appellant only on the basis of medical examinations report of the Prosecutrix which has been done after four months of the alleged incident.

11. According to the medical report of the prosecutrix, there was redness found in the private part of the Prosecutrix. On that basis the appellant has been convicted by the trial Court. But looking to the fact that after four months of the incident, the Prosecutrix was medically examined and at that time if any redness was found then it cannot be said that the redness appeared is due to perform of intercourse before 4 months. Thus, it is not established particularly when the Prosecutrix has categorically stated that nothing has been done with her. Looking to the above, offence under Section 376 (1) of the IPC and Section 4 of the Act is not in accordance with the evidence adduced by the prosecution and the same is not sustainable.
12. With regard to other offences i.e. Section 363 and 366 of the IPC, since

the Prosecutrix has categorically deposed that she had left her house on her own will, accompanied with the appellant, traveled with the appellant on his motor-cycle, the appellant had not allured her and had not taken her forcibly. There is no such type of evidence, therefore, the conviction of the appellant for the offence under Section 363 and 366 of the IPC are also not sustainable.

13. In the result, the appeal is allowed. The appellant is acquitted from the charges framed under the aforementioned Sections.
14. It is reported that the appellant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of six months in light of Section 437-A of the Cr.P.C.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge