

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1168 of 2015

- Narendra Rajak S/o Ratiram Aged About 21 Years R/o Village Mawaigudapara, Police Station Bhanpuri, Civil And Rev. Distt. Bastar Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Bhanpuri, Civil And Rev. Distt. Bastar Chhattisgarh.

---- Respondent

For Appellant	:	Ms. CK Navrang, Advocate.
For Respondent/State	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

16/08/2021

1. By the impugned judgment dated 08/07/2015 passed in Special Session Case No. 17/2015 by the learned Additional Sessions Judge(FTC) Bastar place Jagdalpur(C.G.), the Appellant has been convicted for the offence punishable under Sections 376(2)(N) & 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years, and to pay fine of Rs. 250/- and rigorous imprisonment for 1 year, and to pay fine of Rs. 100/- respectively, with default stipulations. All the jail sentences to run concurrently.
2. In this case, at the relevant time, age of the prosecutrix was about 17 years. According to the entries of *Dakhil Kharij Panji* i.e. Ex. P-2, her date of birth is 09.10.1997. On 05.04.2015, the prosecutrix lodged a

report vide Ex.P-8, alleging therein that prior 3-4 years of lodging FIR, when she was studying in class 6th, the Appellant on the pretext of marriage used to committed sexual intercourse with her. On 12.02.2015 also, the Appellant did the same thereafter he made an allegation upon the prosecutrix that she have love affair with another boy of her village and on this point he started quarreling with her and with intention of murder, he poured kerosene oil on her and set her on fire which she extinguished with water. She underwent treatment at hospital. Later on a village meeting was also held thereafter the matter was reported by the prosecutrix. On the basis of said report, offence has been registered against the Appellant. The prosecutrix was medically examined by Dr. Arpita (PW-12) her report is Ex. P-23. Later on statements of the prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed. Trial Court has framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 12 witnesses. No defense witness has 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.

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 would submit that the Appellant has wrongly convicted by the Trial Court without there being any clinching and reliable evidence available on record. She further submits that from the statement of the prosecutrix, it is well established

that she was a consenting party in the alleged act and she herself developed physical relationship with the Appellant on her own will. With regard to her age, there is no conclusive evidence available on record which can show that at the relevant time, her age was below 18 years, therefore, conviction of the Appellant is not sustainable.

5. On the contrary, learned Counsel appearing for the State opposed the appeal and supported the impugned judgment of conviction.
6. I have heard Learned Counsel appearing for the parties and perused the record to assess the correctness of the impugned judgment of conviction. I have also gone through the statements of the witnesses.
7. In her Court statement prosecutrix (PW-4) deposed according to the case of prosecution, she categorically stated that prior 3-4 years of lodging FIR, the Appellant used to committed sexual intercourse with her. According to this witness, when she was studying in class 6th, the Appellant called her behind his house and on the first time he committed sexual intercourse with her and since then he used to committed sexual intercourse with her. She further deposed that prior 2-3 months of lodging FIR, when she went to the house of the Appellant, the Appellant made an allegation upon her that she have love affair with another boy of her village and on this point he started quarreling with her and poured kerosene oil on her stomach and set her on fire which she extinguished with water. According to this witness a village meeting was also held wherein she disclosed about the above incident and thereafter she reported the matter in concerned Police Station. The above statement of this witness not duly rebutted during her cross-examination. Virtually, in Para 15 of her cross-

examination, it was suggested before her that with her own consent the physical relationship was developed between her and the Appellant, wherein, she has admitted this fact. Thus, from the statement of prosecutrix, it is well established that there was a physical relationship between the Appellant and the prosecutrix and the said physical relationship was developed prior to 3-4 years of lodging FIR.

8. With regard to the age of the prosecutrix, according to *Dakhil Kharij Panji*, her date of birth is 09.10.1997, in her Court statement, she deposed that when she was in class 6th, since then the Appellant used to committed sexual intercourse with her and this statement is not duly rebutted during her cross-examination. Thus, it is well established that on the first time, when the Appellant had committed sexual intercourse with the prosecutrix, she would be studied in class 6-7th. Thus, if the matter is of consent, even then it is not a legal consent.
9. From the evidence available on record and looking to the entire case of prosecution there is sufficient evidence available on record against the Appellant and the crime has duly proved against him. Thus, the learned trial Court has rightly convicted the Appellant.
10. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge