

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 1631 of 2015

- Shival Singh S/o Chattar Singh Aged About 29 Years R/o Village Aamatola (Nedgaon), Police Station-Manpur, Distt. Rajnandgaon, Civil And Rev. Distt. Rajnandgaon, Chhattisgarh.

---- Appellant

Versus

- The State Of Chhattisgarh Through Police Station-Manpur, Distt. Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Rishikant Mahobia, Advocate.
For Respondent/State	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

24/03/2021

1. By the impugned judgment dated 30/10/2015 passed in Special Session Case No. 42/2014 by the Learned Additional Session Judge and Special Judge (FTC and POCSO Act 2012) Rajnandgaon (C.G.) wherein, the Appellant has been convicted for offence punishable under Sections 363, 366(A) & 376(1) of the Indian Penal Code and Section 3/4 of POCSO Act 2012 and sentenced to undergo RI for 7 years and to pay fine of Rs. 1,000/-, RI for 10 years and to pay fine of Rs. 2,000/-, RI for 10 years and to pay fine of Rs. 2,000/- & RI for 7 years and to pay fine of Rs. 1,000/- respectively, with default stipulations.
2. In this case at the relevant time, the age of the prosecutrix (PW-6) was

about 16 years 3 months 7 days. According to her birth certificate (Ex. P-10) and entries of *Kotwari* Register (Ex. P-2-C), her date of birth is 01.08.1997. On 23.11.2013, Kishan Lal (PW-8), father of the prosecutrix lodged a report stating therein that since 18.11.2013, her daughter i.e. prosecutrix is missing. On the basis of said report, FIR (Ex. P-13) has been registered. During course of investigation on 16.03.2015, the prosecutrix was recovered vide recovery memo (Ex. P-15). Her statement under Section 161 of Cr.P.C. was recorded, she was also medically examined by Dr. Sohdera Thakur (PW-7) her medical report is (Ex.P-6). Statements of other witnesses were also recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet was filed. To prove the guilt of the Appellant, the prosecution has examined as many as 14 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. After trial, the Appellant was convicted and sentenced by the Trial Court as mentioned in paragraph one of this judgment. Hence, this appeal.

3. Learned Counsel for the Appellant submits that the Trial has wrongly convicted the Appellant without there being any clinching and sufficient evidence available on record. On perusal of the statement of the prosecutrix (PW-6), it is well established that she was a consenting party in the alleged act and she herself left her house on her own will and stayed about four months with the Appellant in a rented house. It is further submitted by the Counsel that with regard to the age of the prosecutrix (PW-6), there is no clinching evidence available on record which shows that she was below 18 years of age though on her birth

certificate (Ex. P-10) and entries of *Kotwari* Register (Ex. P-2 C), her date of birth is 01.08.1997 but, on what basis these entries have been done by the prosecution. Therefore, the entries of date of birth of the prosecutrix on those documents is suspicious. Since, the prosecutrix was the consenting party and there is no clinching evidence available on record which shows that at the time of alleged incident, she was aged below 18 years of age, therefore, conviction of Appellant is not sustainable.

4. Learned Counsel for the State opposes the arguments advanced by learned Counsel for the Appellant and referring the judgment of *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263, it is argued by the learned State Counsel that for determination of age of the prosecutrix, the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable. In this case, according to the entries of birth certificate (Ex. P-10) of the prosecutrix, her date of birth is mentioned as 01.08.1997, therefore, it is well established that the prosecutrix was below 18 years of age. Hence, the Trial Court has rightly convicted the Appellant.
5. I have heard Learned Counsel appearing for the Parties and perused the record to assess the correctness of the impugned judgment of the conviction.
6. With regard to the incident, the prosecutrix (PW-6) in her Court statement deposed that she went along with the Appellant to Chandrapur for employment where they stayed together in a rented house during that period the Appellant used to commit sexual intercourse with the prosecutrix. During her cross-examination, the

prosecutrix admitted the fact that she went along with the Appellant to Chandrapur for employment, the Appellant used to go for work at 6 AM and come back at 9 PM and during that interval of time, the prosecutrix remained alone. She neither called anyone for help nor tried to escape from there.

7. On minute examination of above statement of the prosecutrix, it is clear that she stayed about four months with the Appellant in a rented house, the Appellant used to go for work at 6 AM and come back at 9 PM and during that interval of time, the prosecutrix have had ample of opportunities to escape from their or to take help from someone, but she did not do so. It appears that she was a consenting party in the alleged act.
8. With regard to the age of the prosecutrix, birth certificate (Ex. P-10) issued by Registrar (Death and Birth) of Government of Chhattisgarh is available. According to the birth certificate, date of birth of the prosecutrix is mentioned as 01.08.1997. In case of **Jarnail Singh v. State of Haryana, (2013) 7 SCC 263**, it has been observed by Supreme Court that for determination of age of the prosecutrix/victim, the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable.
9. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:-

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.

10. Since, in this case birth certificate (Ex. P-10) issued by Registrar (Death and Birth) of Government of Chhattisgarh is available, therefore, for determination of age of the prosecutrix there is no need to examine any other evidence.

11. From the above, it is clear that at time of incident, the prosecutrix was aged below 18 years of age, therefore, if she has given her consent in the alleged act even then her consent is not a legal consent. Looking to the entire evidence adduced by the prosecution, in my considered view, the Trial Court has rightly convicted the Appellant.

12. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

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