

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1547 of 2016

- Guddu @ Shamnath, S/o Muna Baghel, Aged About 25 Years, R/o Alnar Kotwar Para, Thana Parpa, District Bastar, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Parpa- Jagdalpur, District Bastar, Chhattisgarh.

---- Respondent

For Appellant : Shri Vikash A. Shrivastava, Advocate.
For State/Respondent : Shri Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

02/08/2021

1. This appeal has been preferred against the impugned judgment dated 17/10/2016 passed in Special Sessions Case No.19/2016 by the Special Judge, - POCSO, 2012 in the Court of Additional Sessions Judge, (F.T.C.), Bastar, Place – Jagdalpur, (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.	S.I. for 7 years & fine amount of Rs.1,000/- with default stipulations.
U/s 366 of the I.P.C.	S.I. for 10 years & fine amount of Rs.1,000/- with default stipulations.
U/s 376 of the I.P.C.	R.I. for 10 years & fine of Rs.1,000/-

	with default stipulations.
U/s 4 of POCSO Act,	R.I. for 10 years & fine of Rs.1,000/- with default stipulation.
All sentences to run concurrently.	

2. In the present case, at the relevant time age of the prosecutrix (PW-1) was about 16 years. According to the entries made in *Dakhil Kharij Panji*, (Ex.P-7C) date of birth of the prosecutrix is 20.05.2000. Date of alleged incident is 30.04.2016. Brief facts of the prosecution case are that from January, 2016, prosecutrix was working as labour in the tractor of the appellant. On 30.04.2016, appellant made a phone call to prosecutrix and called her in the field where appellant made forcible sexual intercourse with the prosecutrix. Appellant also threatened her to life if she disclosed the incident to anyone. Thereafter, appellant took the prosecutrix in the house of his relatives and from there, prosecutrix made a phone call to her parents and narrated them about the alleged incident. Then parents of the prosecutrix and other villagers reached to the prosecutrix in village Bodal. Thereafter, matter was reported by the prosecutrix in the police station. Statement of prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 9 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 innocence and false implication.

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. He further submits that statement of the prosecutrix is suspicious. If the entire case is taken as it is, it appears that prosecutrix was the consenting party in the alleged act. There is no any conclusive proof available on the 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. Prosecutrix (PW-1) in her Court statement has deposed that appellant is a tractor driver and she was working as labour with him. On the date of incident appellant made a phone call and called her, thereafter, he took her towards the jungle and committed forcible sexual intercourse with her. Thereafter, appellant took her to his village from where prosecutrix made a phone call to her brother-in-law and informed him

about the alleged incident. Then parents of the prosecutrix, her brother-in-law and other villagers came there and took her with them. Thereafter, prosecutrix lodged F.I.R. i.e. Ex.P-1 against appellant. During cross-examination, prosecutrix has admitted that she used to go for labour work regularly with appellant and used to returned after work. She has further admitted that when appellant called her through phone then she had gone to meet him alone and stayed with the appellant in the night. In Para 21 of cross-examination of the prosecutrix, on being suggested by the defence, she further admitted that she made phone call with her phone to her brother-in-law on the next day of the alleged incident and told him about the alleged incident. Paklu Ram Nag (PW-2) i.e. father of the prosecutrix and Muthli Nag (PW-3) i.e. mother of the prosecutrix both have supported the above statement of prosecutrix and deposed that on being informed by the brother-in-law of the prosecutrix, they have gone to village Bodal to take the prosecutrix. Appellant had taken her daughter to village Bodal and committed forcible sexual intercourse with her. Prosecutrix during her cross-examination has remained firm. Immediately, after the alleged incident, she made phone call to her brother-in-law and informed him about the alleged incident. The said statement of the prosecutrix was not rebutted during her cross-examination. If prosecutrix would have been consenting party and she herself had gone with the appellant and the alleged act was committed with her consent, then she would not have made phone call to her brother-in-law and informed him about the alleged act. Therefore, argument advanced by counsel for the appellant that prosecutrix was the consenting party have no substance. For the sake of argument, if it

is assumed that prosecutrix was the consenting party, then also her consent was not the legal consent because as per entries made in *Dakhil Kharij panji* i.e. Ex.P-7C, date of birth of the prosecutrix is mentioned as 20.05.2000. The said entry was made by Sunderlal Dhruv (PW-6), Headmaster, Primary School, Nangur. He deposed that he had made the said entries on the basis of record of *Aanganbadi* which has not been rebutted during his cross-examination. According to the entries made in *Dakhil Kharij Panji* date of admission of prosecutrix in class 1 was 20.07.2006 and she left the school after passing class 5 on 18.06.2011. Above statement of this witness is not duly rebutted during his cross-examination. From his statement, it is established that prosecutrix had left the school after class 5 on 18.06.2011. Thus, age of the prosecutrix mentioned in *Dakhil Kharij Panji* is genuine and there is no other reason to doubt on the same fact.

8. On a minute examination of evidence adduced by the prosecution, and considering the age of the prosecutrix, in my considered view, the trial Court has rightly convicted the appellant.
9. Consequently, the appeal has no merit and is, therefore, dismissed.
10. 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