

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1826 of 2019

Judgment Reserved on : 13.8.2021

Judgment Delivered on : 6.9.2021

Chandra Kumar Anant, son of Shri Siyaram Anant, aged about 22 years,
resident of Village Sarora, Police Station Tilda, District Raipur, Chhattisgarh
----- **Appellant**

versus

State of Chhattisgarh through Chowki Khandsara, Station House Officer,
Police Station Bemetara, District Bemetara, Chhattisgarh
----- **Respondent**

For Appellant : Shri N.K. Malviya, Advocate
For Respondent : Shri Akhtar Hussain, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 31.10.2019 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Pocso Act'), Bemetara in Special Case No.11 of 2017, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500 with default stipulation
Under Section 366A of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.1000 with default stipulation
Under Section 376(2)(n) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.2000 with default stipulation

Under Section 6 of the Pocso Act	Rigorous Imprisonment for 10 years and fine of Rs.2000 with default stipulation
	All the jail sentences are directed to run concurrently

2. According to the prosecution case, at the relevant time, the prosecutrix (PW2) was below 18 years of age. On 23.12.2016, father of the prosecutrix, namely, Punit (PW3) lodged First Information Report (Ex.P4) regarding missing of the prosecutrix on the basis of which initially an offence was registered under Section 363 of the Indian Penal Code against an unknown person. During inquiry on 7.1.2017, the prosecutrix was recovered from the possession of the Appellant. Her statement was recorded under Section 161 of the Code of Criminal Procedure and thereafter other offences were added. Statements of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charges against him.
3. To bring home the offence, the prosecution examined as many as 19 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that from perusal of the statement of the prosecutrix (PW2) it appears that she was a consenting party and she herself left her house and joined the company of the Appellant and stayed as wife of the Appellant at a rented house at Bilaspur for many days. With regard to her age, it was argued that there is no conclusive evidence on record on the basis of which it could be established that she was below 18 years of age. Kotwar Dhan Singh (PW12) admitted the fact that Punit (PW3), father of the prosecutrix put signature in the Kotwari Register (Ex.P26C) after registration of the offence against the Appellant. In Dakhil-Kharij Register also, who and on what basis got the entries registered are not established. It was further argued that Punit (PW3) admitted that his marriage was performed 23-24 years ago, 1½ years thereafter birth of his son took place and 2 years thereafter birth of the prosecutrix took place. From the above also, it appears that age of the prosecutrix was above 18 years. Since she was a consenting party and she herself joined the company of the Appellant and her age was above 18 years, the conviction of the Appellant is not sustainable.
6. Opposing the above arguments, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record of the Trial Court including statements of the witnesses and other material.

8. As regards the incident, the prosecutrix (PW2), in her Court statement deposed that on the date of incident the Appellant came to her on a motorcycle and told that he will perform marriage with her and asked her to come along with him and, therefore, she went along with him. He took him to his house and committed sexual intercourse with her there. He took her to a rented house at Bilaspur and there also he committed sexual intercourse with her. During her cross-examination, she admitted that her talks were going on with him and when he called her then she willingly went along with him. She further admitted that at Bilaspur she lived along with him in a rented house and there they introduced themselves to the landlord as a husband and wife. She further admitted that she was cooking meals for them and was also going to market along with him, but she never made any complaint to anyone against him. From her above admissions and conduct, it is well established that she was a consenting party and she herself joined the company of the Appellant and both stayed at Bilaspur as a husband and wife for many days.
9. In **(2013) 7 SCC 263 (Jarnail Singh v. State of Haryana)**, it is held by the Supreme Court that for determination of age of the victim girl, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 needs to be referred. It is held as under:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Rule 12 referred to hereinabove 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 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 the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

10. On examination of the present case in the light of the above view taken by the Supreme Court, I find that there are two documentary evidence available on record regarding age of the prosecutrix. They are the entries of Dakhil-Kharij Register (Ex.P20C) and the entries of Kotwari Register (Ex.P26C). In Ex.P20C, date of birth of the prosecutrix is mentioned as 12.9.2000 and in Ex.P26C also her

date of birth is mentioned as 12.9.2000. Though there is an admission by Kotwar Dhan Singh (PW12) that Punit (PW3), father of the prosecutrix signed in the Kotwari Register (Ex.P26) after registration of the offence against the Appellant. Even if it is so, the prosecution case does not get affected and the whole relevant entries of the Kotwari Register cannot be considered as suspicious. Similarly, though Smt. Keshar Thakur (PW6), a teacher of the Primary School Khurushbod admitted that normally parents of the children state date of birth of their children on their surmises at the time of admission in the school, I do not see any reason to believe that in the present case also the date of birth of the prosecutrix was got registered on surmises.

11. Apart from that, in her Court statement, the prosecutrix (PW2) categorically deposed that her elder brother Mahesh (PW4) was 19 years old and she was 1½ years younger to him. Her above statement is not duly rebutted during her cross-examination. The apparent age of Mahesh (PW4) has also been mentioned by the Trial Court in the deposition-sheet as 18 years. Punit (PW3), father of the prosecutrix and Mahesh (PW4) also deposed that age of Mahesh (PW4) was 18 years and the prosecutrix (PW2) was about 2 years younger to Mahesh (PW4). The above statement of these witnesses is also not duly rebutted during their cross-examination.
12. Therefore, looking to the above documentary and oral evidence, it is well established that at the time of incident, age of the prosecutrix was below 18 years. Hence, I do not find any substance in the argument advanced by Learned Counsel appearing for the

Appellant in this regard. The Trial Court has rightly convicted the Appellant. The appeal has no merit.

13. In the result, the appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
JUDGE