

(2019) 08 CHH CK 0201

Chhattisgarh High Court

Case No: Criminal Appeal No. 230 Of 2009

Puran Netam

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 29, 2019**Acts Referred:**

- Indian Penal Code, 1860 - Section 342, 363, 366, 376
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Vimla Singh Kapoor, J**Bench:** Single Bench**Advocate:** Sanjay Agrawal, Aman Kesharwani**Final Decision:** Allowed

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**Judgement**

Vimla Singh Kapoor, J

1. Case put-forth by the prosecution in nutshell is that on 30.12.2007 at about 8 PM when the prosecutrix (PW-2) along-with her elder sister and

friends was enjoying village fair, the accused/appellant herein came there and caught hold of her hands. It is alleged that when she tried to free herself

from the clutches of the accused/appellant, he tied both her hands with the Saari worn by her and when this act of the accused/appellant was opposed

by her sister and friends, he threatened them all of being beaten. Thereafter, he took her to village Chhurawand and kept her in confinement in the

house of one Rasool (PW-4) and subjected her to forcible sexual intercourse twice on that day. She is alleged to have been held captive by the

accused/appellant in the house of PW-4 till 02.01.2008 and during all this period she was being sexually abused by him. On 02.01.2008 her father

Govind Rao (PW-3) came there and freed her. As is alleged by the prosecution, when no decision could be taken in the Panchayat meeting so

convened, the FIR (Ex.P-3) came to be lodged on 07.01.2008 i.e. about a week after the date of incident for the offences under sections

363, 366, 342 and 376 IPC. After medical examination of the prosecutrix and completion of other investigation related formalities, charge-sheet was

filed against the accused/appellant under these sections followed by framing of charge accordingly.

2. On the basis of evidence adduced by the prosecution and considering the statement of the accused/appellant recorded under Section 313 Cr.P.C.

learned Court below convicted the accused/appellant under Sections 363, 366, 376 and 342 IPC imposing the sentence of RI for 3 years with fine of

Rs.100 U/S. 363; RI for 5 years with fine of Rs.500 U/S. 366; RI for 7 years with fine of Rs.500 U/S. 376 and SI for 6 months under Section 342 IPC

plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submits that if over all evidence of the prosecutrix (PW-2) is seen in its entirety, she appears to have been a

consenting party to the act of the accused/appellant. He submits that the story of her abduction by the accused/appellant from a crowded place that

too in the presence of her elder sister and friends and then keeping her in the house of PW-4 for about 3 days and commission of sexual intercourse

with her appears to be highly improbable. According to the counsel for the appellant, the prosecution has not even proved by leading clinching

evidence that on the date of incident prosecutrix was below 18 years of age. The gist of the over all submission made by counsel for the

accused/appellant is that the prosecution has utterly failed to prove its case beyond all reasonable doubts and, therefore, the benefit has to go to the

accused/appellant in the form of acquittal.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are fully based on the evidence

adduced by the prosecution and, therefore, the well written judgment impugned in this appeal does not warrant any interference by this Court.

5. First of all, it appears to be relevant for this Court to mention at the outset that there is delay of about a week in lodging the report Ex.P-3 on

07.01.2008 though the incident had taken place on 30.12.2007, and except attributing its reason to convening of Panchayat meeting, no satisfactory explanation has been offered by the prosecution. Let us now turn to the factual aspect of the case, which unfolds that on 30.12.2007 at about 8 PM when the prosecutrix was watching village fair in the company of her elder sister and the friends, the accused/appellant came there from behind, tied her hands with her own Saari, and took her away to the house of PW-4, made her captive for about 3 days and all along sexually molested her many a time. The version of the prosecutrix that the protest made by her sister and the friends did not yield any positive result, does not convince the judicial mind of this Court because had the prosecutrix not readily agreed to this act of the accused/appellant of taking her away, it would have been next to impossible for him to do all that from a huge gathering present in the village fair. The age disclosed by the prosecutrix comes to 17 years whereas her father has disclosed it to be 15. However, there is no substantial piece of evidence as to on what basis such age has been arrived at. Father of the prosecutrix (PW-3) has categorically stated that he himself had taken his daughter for admission in the school but he did not disclose her date of birth and the same was recorded by the school teacher of his own. He has reiterated that he does not recollect the date of birth of the prosecutrix. Though certain un-exhibited mark sheets of the prosecutrix of Class IV and VI disclose her date of birth to be 05.05.1992 but in the absence of the fact as to on what basis or at whose instance it came to be recorded, the prosecution cannot derive any benefit of the same. Though the prosecutrix is stated to have failed once in Class VI and once in Class VIII, she has not given the specific detail as to when she studied those two classes. She has not even stated as to in which class she was studying on the date of incident. In these circumstances, where the prosecution could not prove the factum of the prosecutrix being below 18 years of age on the date of incident, she would legally be treated above

18. What is more surprising here is that one of her friends namely Chitai (PW-7) who was the resident of the village of the prosecutrix and was present along with her at the time of incident, has not supported the case of the prosecution and has been declared hostile. She is stated to have not

even identified the prosecutrix or the accused. All this apart, Dr. C. Rao (PW-5) who Medically examined the prosecutrix and gave her report Ex.P-8

has categorically stated that her hymen was old torn, her vagina easily entered two fingers, no external injury such as scratches etc. were found on

her body and that she was habitual to sexual intercourse.

6. In view of the aforesaid factual discussion, this Court has no hesitation to say that the prosecution has utterly failed to prove its case under any of

the sections for which the accused/appellant has been convicted by the learned trial Court below. At the same time, the Court below also appears to

have been heedless to the evidence of the prosecution witnesses while recording a finding of conviction against the accused/appellant under Sections

363, 366, 376 and 342 IPC and imposing the sentence of various descriptions given above. Being all this, the judgment impugned is liable to be set

aside and the appeal deserves to be allowed.

7. In the result, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charges levelled against him. The

appellant who appears to be in jail consequent to cancellation of bail and issuance of non-bailable warrant, be set free forthwith if not required in any

other case.