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**(2018) 07 CHH CK 0178**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 945 Of 2001

Uttam Kumar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** July 12, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 161, 313
- Indian Penal Code, 1860 - Section 342, 363, 366, 376, 376(1)

**Hon'ble Judges:** Gautam Chourdiya, J

**Bench:** Single Bench

**Advocate:** K.D. Kuldeep, Avinash K. Mishra

**Final Decision:** Dismissed

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**Judgement**

Serial No.,Conviction,Sentence

1.,"Under Section 363 of Indian Penal Code

(for short 'IPC').","4 years R.I. and fine of Rs. 1,000/- in

default of which 02 months R.I.

2.,Under Section 366(A) of IPC.,"5 years R.I. and fine of Rs. 1,000/- in

default of which 02 months R.I.

3.,Under Section 376(1) of IPC.,"7 years R.I. and fine of Rs.2,000/- in

default of which 04 months R.I.

challenged in any manner, in cross examination and otherwise. As per father of the prosecutrix, the age of the prosecutrix was 14 years and she was",,

minor. Statement of prosecutrix's father also supported by village Kotwar PW-9 Agam Das in Kotwari Panji Ex. P-10A and the age of prosecutrix,,

mentioned in that Kotwari Panji Ex. P- 10A, date of birth was 16.06.1985, that means at the time of incident prosecutrix age was below 15 years. 11",,,

The age of the prosecutrix was below 15 years according to Ex.P-10A and proved by PW-9 Agam Das (Kotwar). Ex. P-9 is a seizure memo. Birth,,

and death report form was registered by village Kotwar and in that register entries were made. Ex. P-10A has been duly proved by Agam Das and,,

there is no reason to disbelieve the said certificate. 12 PW-15 Chunnilal Chandrakar stated in his examination that according to Primary School,,

Register Ex.P-21, when prosecutrix was admitted in school in serial no. 1158, date of birth was 20.06.1985 and those entries made in the school",,,

register have also been proved which shows that at the time of incident, the age of prosecutrix was below 15 years. 13 As regards contradiction in",,,

School register and Kotwari Panji, there was four days gap in Kotwari Panji and School register i.e. 16.06.1985 and 20.06.1985, but that contradiction",,,

is not of such a nature which could lead to an inference that at the relevant time the prosecutrix was not a minor, in particular when the witnesses, as",,,

discussed above, have stated in clear terms that the prosecutrix was below 15 years at the date of incident and the documents pertaining to the age of",,,

the prosecutrix have been duly proved by the author of the same.,,

14 PW-1 Prosecutrix stated that when she was roaming in garden at about 2 P.M. the accused/appellant met her and promised to marry her and,,

further allured to give ornaments and clothes. On this, the prosecutrix went with appellant/accused and thereafter appellant/accused had committed 3-",,,

4 times sexual intercourse with Prosecutrix in his home and other places (i.e. garden & near side river) also he committed rape with prosecutrix. Then,,

Bodhni Bai, (Maternal Aunt of Prosecutrix) took her away from the appellant/accused's house and, thereafter, father of the prosecutrix lodged FIR",,,

against accused/appellant. In her cross examination, she admitted that she was entered the house of appellant/accused by jumping from the back side",,,

of wall. In paragraph 6, she admitted that no incident was happened with her and she never narrated anybody about rape. That major portion",,,

specifically mentioned in her chief examination that where a place of occurrence made by prosecutrix cannot be denied, even PW-2 Panchuram also",,,

narrated regarding rape committed by appellant/accused and PW-11 Omprakash also stated that on certain allurements the accused/appellant,,

committed sexual intercourse with prosecutrix.,,

15 PW-2 Father of the prosecutrix stated that the prosecutrix informed about the incident to her Maternal Aunt and Mother, who in turn disclosed",,,

about the same to him. 16 PW-3 Dr. C.B.Gupta medically examined the appellant and found accused/appellant capable of performing sexual,,

intercourse.,,

17 PW-4 Ransjeeven Yadav, Patwari prepared the spot map Ex.P-5. PW-5 Mukund Bihari Rai, PW-8 Vishwanath, PW-13 Raju Sakhe are formal",,,

witnesses. PW-6, Prahalad Singh, PW-7 Devnarayan Sahu, Police Personnel, assisted in the investigation. PW-11 Omprakash is the Sarpanch of the",,,

village has stated that on being enquired the prosecutrix disclosed to her family members in his presence that on certain allurements the,,

accused/appellant committed sexual intercourse with her. PW-12 Bodhani Bai (Maternal Aunt of the Prosecutrix) has supported the version of the,,

prosecutrix. PW-14 D.R. Sapre, Investigating Officer has duly supported the prosecution case. PW-15 Chunnilal Chandrakar, Head master has stated",,,

about the date of birth of the prosecutrix and also produced the admission register of the school for the relevant period. PW-16 Dr. Neeta Bhatnagar",,,

medically examined the prosecutrix. One Defence witness Keshar Bai, DW-1 has not stated any specific reason in favour of the appellant/accused.",,,

18 As per the FSL report Ex.P-19 underwear of accused, panty and slide of prosecutrix examined by Senior Scientist found semen and spermatozoa.",,,

19 Regarding the age of prosecutrix in the preceding paragraphs, it has already been observed that on the date of incident the prosecutrix was minor",,,

below the age of 15 years. From the over all evidence available on record, oral, documentary as well as medical & forensic report, it is clear that the",,,

appellant/accused had committed sexual intercourse with the prosecutrix. It is also proved that accused/appellant committed sexual intercourse with,,

the prosecutrix below the age of 15 years girl child, kidnap from lawful guardianship, she may be forced for seduce to illicit sexual intercourse and",,,

below the age of 15 years girl child was raped by the accused/appellant. Even if, it is presumed that the said act was with the consent of the",,,

prosecutrix, it would be to no help to the appellant/accused because the prosecutrix was a minor below the age of 15 years on the date of incident and",,

as such her consent was of no consequence. On the basis of aforesaid discussion, this Court is of the opinion that the finding of guilt recorded by the",,

trial Court is based on just and proper appreciation of the evidence on record and being so, the same is hereby affirmed.",,

20 In the result, the appeal fails and is, accordingly dismissed. 21 Accused/appellant is on bail since 08.09.2003. His bail bond is cancelled and he is",,

directed to surrender and to be taken into custody forthwith to serve the remaining part of the sentences awarded to him.,,