

## Devising Vs State Of Chhattisgarh

**Court:** Chhattisgarh High Court

**Date of Decision:** July 19, 2018

**Acts Referred:** Indian Penal Code, 1860 " Section 363, 366, 376, 376(2)(n), 506

Code Of Criminal Procedure, 1973 " Section 313

Protection Of Children From Sexual Offences Act, 2012 " Section 4, 6

**Hon'ble Judges:** Ajay Kumar Tripathi, CJ; Pritinker Diwaker, J

**Bench:** Division Bench

**Advocate:** Sandeep Dubey, Rahul Tamaskar

**Final Decision:** Allowed

### Judgement

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 5.11.2014 passed by the Special Judge (POCSO)/Additional

Sessions Judge (FTC) Bastar at Jagdalpur in Special Sessions Trial No.10/2014 convicting the accused/appellant under Sections 363, 366 of IPC & 6

of Protection of Children from Sexual Offences Act, 2012 and sentencing him to undergo RI for five years, fine of Rs.200/-; RI for seven years, fine

of Rs.200/- and RI for twelve years, fine of Rs.500/- with default stipulations respectively.

02. As per prosecution case, on 3.1.2014 FIR (Ex.P/9) was lodged by the prosecutrix (PW-6) alleging therein that on 18.11.2013 while she was

returning from market, the accused/appellant met her on the way, he expressed his desire to marry her and then took her in a taxi to Jagdalpur. She

states that from Jagdalpur she was taken to Nagarnar where they stayed in the house of friend of the appellant. According to the prosecutrix, she was

subjected to physical relation by the appellant in the said house. She has further states that she was made to stay in the said house for about 20 days

under threat of life and thereafter, on 7.12.2013 she was taken to the house of aunt of the appellant where they stayed for about 15 days. She states

that during all this period she was subjected to sexual intercourse by the appellant against her wish and without her consent under the threat of her life.

On 21.12.2013 the appellant took her to his house where they stayed till 2.1.2014 when she was dropped to her house. Based on this report, offence

under Sections 363, 366, 376 & 506 of IPC was registered against the appellant. The prosecutrix was medically examined by PW-2 Dr. Sarita

Mahobia vide Ex.P/3 on 3.2.2014 who did not notice any external or internal injury on the person of the prosecutrix, her hymen was old torn, her

vagina admitted two fingers easily and that she was habitual to sexual intercourse. The appellant was also medically examined vide Ex.P/1 by PW-1

Dr. BD Rai who found him capable of performing sexual intercourse. After investigation charge sheet was filed against the appellant under Sections

363, 366, 376, 506 of IPC and Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012. The trial Court charged the appellant under

Sections 363, 366, 376(2)(n), 506 Part-II of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also

recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and

false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment

convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under: that there is no legally admissible evidence on record showing the prosecutrix to be minor

on the date of incident. that the prosecutrix remained in the company of the appellant for more than two months and during this period she visited

several places without offering any resistance or protest, which itself proves that she was a consenting party. This apart, she herself admits in cross-

examination that physical relation between them was with her consent.

that the medical evidence also negates the possibility of forcible sexual intercourse with the prosecutrix and suggests that the act so committed was

consensual one.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in

accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Dr. BD Rai medically examined the appellant on 4.1.2014 and found him capable of performing sexual intercourse vide Ex.P/1. PW-2 Dr.

Sarita Mahobia did medical examination of the prosecutrix on 3.1.2014 vide Ex.P/3. According to her, she did not notice any external or internal injury

on the person of the prosecutrix, her hymen was old torn, her vagina admitted two fingers easily and that she was habitual to sexual intercourse. PW-3

Medharam, father of the prosecutrix, has stated that the prosecutrix went missing, for which he lodged a report and when the village meeting was

called, it was attended by the appellant also. He states that he was informed by the prosecutrix that she was subjected to sexual intercourse by the

appellant as a result of which she became pregnant and that she was carrying pregnancy of about five months. In cross-examination he admits that

during the period when the prosecutrix was missing she would talk to her sisters over cell phone. PW-4 Dhurjomani has turned hostile. PW-5

Premchand Jha, Patwari, prepared the spot map Ex.P/6.

09. PW-6 prosecutrix has stated that while she was returning from market, the appellant met her on the way, took her to Jagdalpur in a taxi, kept her

in the house of one Dhurjomani at Village-Upanpal for twelve days where he had physical relation with her and thereafter he took her to the house of

his uncle at Lamekar where they stayed for thirteen days and during this period also the appellant committed sexual intercourse with her. She states

that the appellant then took her to his village - Bagmohlai, kept her there for eight days and during this period also he established physical relation with

her. However, when the villagers informed her parents that she is there, her parents came to take her back. She admits that she lodged report Ex.P/9.

In cross- examination she admits that while she was being taken by the appellant from one place to another, she came across number of people and

that she used to talk with her parents and sisters on mobile while she was living with the appellant. She admits that the physical relation between them

was with her consent.

10. PW-7 Raghunath Kashyap, school teacher, has proved Ex.P/13C i.e. admission register wherein date of birth of the prosecutrix is mentioned as

15.7.1999. However, he admits that no document in relation to age of the prosecutrix was brought by her father while admitting her in the school. PW-

8 Nityanand John and PW-11 Saroj Toppo, police personnel, assisted in the investigation. PW-9 Shambati has turned hostile. PW-10 GP Panda,

investigating officer, has supported the prosecution case.

11. According to the prosecutrix on 18.11.2013 while she was returning from market, the accused/appellant met her on the way and on the pretext of

marrying her took her in a taxi to Jagdalpur and thereafter to various places where they stayed for a considerable period and on 2.1.2014 he dropped

her at her house. She states that during this period the appellant had sexual intercourse with her on the threat of her life, against her will and without

her wishes. However, in the Court she admits that the physical relation so established was with her consent and wishes. She admits that while she

was being taken by the appellant from one place to another, she came across number of people but did not disclose about such incident to any of

them. She also admits that during her stay with the appellant she used to talk to her parents and sisters on cell phone. This fact has also been admitted

by her father (PW3 Mandharam). Her medical report (Ex.P/3) also negates the possibility of any forcible sexual intercourse with her. Thus, in view of

the above oral and medical evidence, it stands proved beyond all reasonable doubt that the prosecutrix was a consenting party to the act committed by

the appellant.

12. Now what remains to be seen is whether the prosecutrix was a minor on the date of incident. From perusal of the record, we do not find anything

which could suggest that she was minor on the date of incident. The prosecution has utterly failed to prove minority of the prosecutrix. Though

ossification report is there on record, according to which she was aged in between 14 & 17 years, but the said document has not been exhibited.

Though according to the school admission register Ex.P/13C, date of birth of the prosecutrix is mentioned as 15.7.1999, however, PW-7 Raghunath

Kashyap, school teacher, has admitted the fact that no document in relation to age of the prosecutrix was brought by her father while admitting her in

the school. As such, there is no conclusive evidence to show that she was minor on the date of incident. Being so, the benefit of doubt must be

credited to the appellant.

13. On the basis of aforesaid discussion, we are of the opinion that the trial Court was not justified in holding the appellant guilty under Sections 363,

366 of IPC and Section 6 of Protection of Children from Sexual Offences Act and he deserves to be acquitted of the said charges by giving him

benefit of doubt.

14. In the result, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellant of all the charges leveled against him by

extending him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.