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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 926 of 2014**

Monu S/o Dayaram Satnami Aged About 20 Years R/o Village Motinpur,
Ps And Post Pandariya, Civil And Rev. Distt. Kabirdham Kawardha.,
Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Ps Kukdur, Distt. Kabirdham Kawardha
C.G. , Chhattisgarh.

---- Respondent**AND****Criminal Appeal No. 1205 of 2014**

Vijay S/o. Ramkaran Satnami Aged About 26 Years R/o. Vill. Motinpur,
P.S. Pandariya, Civil And Rev. Distt. Kabirdham C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through SHO, P.S. Kukdur, Distt. Kabirdham
C.G., Chhattisgarh.

---- Respondent

For Appellants	:	Shri C.R. Sahu, Advocate.
For Respondent/ State	:	Shri Arun Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****28/02/2019**

Heard.

(1) Though these appeals have been decided by the separate judgments, but having same sessions trial number they are being disposed off by this common judgment. Challenge in these appeals is to the judgment of conviction and order of sentence dated 6.8.2014 of appellant – Monu in Cr.A. No. 926 of 2014 and the judgment of conviction and order of sentence dated 22.11.2014 of appellant – Vijay in

Cr.A. No. 1205 of 2014, passed by Learned Additional Sessions Judge (FTC) and Special Judge, Protection of Children from Sexual Offences Act, 2012, Kabirdham, District Kabirdham (Kawardha), Chhattisgarh in Sessions Trial No. 33 of 2014 whereby and whereunder the learned Additional Sessions Judge (FTC) and Special Judge have convicted appellant – Monu in Cr.A. No. 926 of 2014 for the offence under Sections 363, 366(A), 376(2)(i) and 506 part-II read with Section 34 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for 7 years, 7 years, 10 years, 10 years and 7 years and appellant – Vijay in Cr.A. No. 1205 of 2014 for the offence under Sections 363/34, 366(A)/34 and 506 part-II read with Section 34 of the IPC and sentenced him to undergo rigorous imprisonment for 7 years, 7 years and 7 years, respectively with a direction to run all the sentences concurrently in both the cases.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on the date of incident i.e. 6.1.2014 at about 6 a.m. in the morning when the minor prosecutrix (PW-4) was returning from the fields she had gone to answer the call of nature, then the appellants in both the cases caught hold of her and by force took her on a motorcycle to a nearby jungle. Appellant – Monu in Cr.A. No. 926 of 2014 committed the offence of rape with her while appellant – Vijay in Cr.A. No. 1205 of 2014 stood guard nearby. The

prosecutrix (PW-4) was then brought back to the village by the appellants themselves and by threatening her with dire consequences they released her. FIR Ex. P/4 was lodged on 7.1.2014 naming the appellants as the culprits. The case was investigated and the prosecutrix (PW-4) was medically examined. In the investigation it was found that date of birth of the prosecutrix was 5.5.1998 and on that basis, it was found that she was minor on the date of incident.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(5) During trial, Appellant – Monu in Cr.A. No. 926 of 2014 was charged with the offence under Sections 363/34, 366A/34 and 376(1) of the IPC and in alternative, Sections 376(2)(i) and 506 part-II read with Section 34 of the IPC and Section 4 of the POCSO Act. Appellant – Vijay in Cr.A. No. 1205 of 2014 was charged with the offence under Sections 363/34, 366A/34 and 506 part II, read with Section 34 of the IPC. The appellants denied the charges and prayed for trial. The trial of appellant – Monu was taken first as the co-accused/ appellant – Vijay was absconding. The prosecution examined as many as 11 witnesses to prove the guilt of appellant- Monu in Cr.A. No.926 of 2014. Two witnesses were examined in defence. Appellant- Vijay in Cr.A. No.1205 of 2014 was tried separately later on. No witness was examined in defence. Statements of the appellants were recorded under Section 313

of the Cr.P.C. wherein the appellants denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced appellant- Monu in Cr.A. No.926 of 2014 by the impugned judgment dated 6.8.2014 and appellant- Vijay in Cr.A. No.1205 of 2014 by the impugned judgment dated 22.11.2014 as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellants submits that the whole story of the prosecution is full of doubts. Although, the FIR vide Ex. P/4 names both the appellants as the accused persons but surprisingly the statement under Section 164 of the Cr.P.C. which was recorded later on of the prosecutrix (PW-4) mentions that she was abducted and raped by two unknown persons. Later on, in Court statement on one hand the prosecutrix (PW-4) has stated that she recognizes the accused person in the Court as the person who has abducted her and on the other hand, she says that she was abducted by two boys who had covered their faces with some clothes. In her statement recorded on 26.6.2014, she has admitted about giving the statement under Section 164 of the Cr.P.C. vide Ex. P/6 and P/6A. She has also admitted in cross-examination by defence that she was

abducted by two unknown persons. Therefore, the statement of the prosecutrix (PW-4) is full of contradictions which should not have been relied upon to convict the appellants in this case. The medical evidence also does not support the prosecution regarding the commission of offence of rape, therefore, the appellants in both the case are entitled for acquittal. Hence, it is prayed that the appeals be allowed.

(9) Per contra, learned counsel for the Respondent/ State opposed the prayer and submissions. It is submitted that the prosecution has proved its case beyond reasonable doubt. FIR has been promptly lodged by the prosecutrix herself on the very next day of the incident which was named against both the appellants. The minor variations and discrepancies in the evidence of the prosecutrix (PW-4) and other witnesses cannot come in the way and only for this reason, it cannot be said that the statement of the prosecutrix is unworthy of credit. Therefore, both the appeals are without any substance and they be dismissed accordingly.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) The age of the prosecutrix (PW-4) is not an issue, as it is not a case of consent hence, the only issue remains to be considered and decided in this appeal is whether the prosecution has proved its case beyond reasonable doubt, that it were the appellants who had abducted the prosecutrix (PW-4) and appellant – Monu had raped her. The trial was

conducted twice in this case, firstly against the appellant – Monu in Cr.A. No.926 of 2014 who was arrested and placed in detention and later on, when the absconding co-accused/ appellant – Vijay in Cr.A. No. 1205 of 2014 was arrested and placed in detention. Therefore, the statements of the witnesses have been recorded twice by the Court below.

(12) In her first statement, the prosecutrix (PW-4) has stated on 26.6.2014 that she recognizes the appellant present in the Court. She stated that when she was coming back after answering the call of nature, two boys who had wrapped clothes on their faces, took her to a jungle where appellant – Monu raped her and another boy also present nearby. She has stated about lodging of FIR vide Ex. P/4 which is a named FIR. In the Examination-in-Chief itself she has stated about recording of the statements provided Ex.P/6 and P/6A, which are statements under Section 164 of the Cr.P.C. in which she made a statement, that she was abducted by two unknown persons and one of those unknown persons raped her. This statement vide Ex.P/6 and P/6A needed explanation, which has not been explained by the prosecution and the same has been relied upon and exhibited, which appears to be a surprise. In cross-examination by defence the prosecutrix admitted that she was abducted by unknown persons.

(13) In her repeat statement, the prosecutrix (PW-4) on 19.11.2014 again stated that she identified this appellant present in the Court which was appellant – Vijay in Cr.A. No.1205 of 2014. She again stated that both the appellants abducted her and then appellant- Monu in Cr.A.

No.926 of 2014 raped her in presence of appellant – Vijay in the jungle regarding which she again stated about lodging of FIR Ex. P/4 and she again stated about recording of her earlier statement Ex.P/6 and P/6A.

(14) In cross-examination she has admitted that she could not see the culprits as their faces were covered with cloth. She has also admitted that she was not acquainted with the appellants on the date and time of incident and she could not also see and identify them because of the darkness in the early morning.

(15) Shiv Prasad (PW-1) who was examined as (PW-3) later on, is father of the prosecutrix, likewise Tiharo Bai (PW-2) who was examined as (PW-1) later on, is mother of the prosecutrix, both are hearsay witnesses and have made the statement on the basis of the information given by the prosecutrix (PW-4). Parwati (PW-5) who was again examined as (PW-4) is neighbour of the prosecutrix who is also an hearsay witness and her statement is based on the information given by the prosecutrix (PW-4).

(16) There is no need to consider on the evidence of the remaining witnesses who have given statement regarding the investigative procedures. The case fully rests upon the statement of the prosecutrix (PW-4). The prosecutrix (PW-4) has made variable statements firstly naming the appellants as the persons and on another occasion while recording the statement under Section 164 of the Cr.P.C. she has changed the version that she was abducted and raped by unknown

persons. Thereafter, in the Court statement the prosecutrix (PW-4) has supported the prosecution in her examination-in-chief and she has made admissions in favour of the defence in her cross-examination which shows that the reliability of the prosecutrix (PW-4) is seriously affected and she is not worthy of reliance. The conviction of the appellants cannot be based only on the evidence of the prosecutrix (PW-4) on account of her unreliability.

(17) After close scrutiny and due consideration of the entire evidence present before the trial Court, I am of the opinion that the conviction of the appellants in both the appeals cannot be sustained on the evidence of the prosecution which is not beyond reasonable doubt. The conviction and sentence of the appellants imposed by the trial Court is set aside and they are acquitted of the charges framed against them. They be set at liberty if not required in any other case.

(18) Accordingly, the appeals are allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE