

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.742 OF 2017
(Arising out of S.L.P.(Crl.) No.1572 of 2016)
JEEVAN LAL Appellant(s)

Versus

STATE OF MADHYA PRADESH (NOW CHHATTISGARH) Respondent(s)

O R D E R

1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 2.12.2014 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.1564 of 2000, whereby the appeal filed by the appellant herein was dismissed and the appellant's conviction under Section 376(1) of the Indian Penal Code and sentence passed by the Sessions Court, was confirmed.

3. Aggrieved by the said order, the present appeal has been filed by the appellant.

4. It is mainly contended by the learned counsel for the

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appellant that the High Court has committed an error in not considering the First Information Report (in short 'F.I.R.'), the letters annexed at page Nos. 35 and 39 of the paper book (Annexure P-2 and P-3) and the admissions made by the father of the girl that her age on the date of offence was more than 16 years.

5. In the F.I.R., the age of the girl was stated to be 17 years. Further in the letter dated 8.7.1999 (Annexure P-2-page 35 of the paper book) addressed to the Community Health Centre, Khairagarh and signed by P.S. Khairagarh, the age of the girl has been indicated as 16 years and 8 months. Furthermore the letter (Annexure P-3 at page 39 of the paper book) written by the father of the girl and addressed to the Inspector, P.S. Khairagarh, states that he does not want medical examination of his daughter.

6. The learned counsel for the appellant also brought to our notice that after the conviction of the appellant by the Additional Sessions Judge, Khairagarh in Sessions Trial No. 156 of 1999, the girl as well as the present appellant got married on 20 th

May, 2003 and they had five children out of

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the wedlock. Moreover he states that they are happily married and residing peacefully.

7. Per contra the learned counsel appearing on behalf of the State, however, submits that as far as age of the girl is concerned, it is clear from the judgments of the court below that the prosecution has been able to prove that she was less than 16 years old at the time of the incident.

8. We have heard learned counsel for the parties and also perused the judgment of both the Courts below.

9. We believe that the present case involves only one issue for this Court to consider, which is regarding the determination of the age of the prosecutrix.

10. It is to be noted that the age prescribed for consensual sexual intercourse as on the date of occurrence i.e. 8.7.1999 for unmarried individuals, under Section 376 of the Indian Penal Code, is 16 years.

11. It is not in dispute that the girl as well as the appellant had a love affair and were in a relationship. It has been admitted that the girl has given consent for sexual intercourse with the appellant herein. In relation to this, even the High Court

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in its judgment has opined that the incident was consensual sexual intercourse.

12. It is to be noted that the prosecution has failed to produce any Admission Form of the school which would have been primary evidence regarding the age of the prosecutrix.

13. The School Transfer Certificate produced by the prosecution was also procured on 09.07.1999, few months after the incident and one day after the lodging of the First Information Report. As per that certificate also, she joined the school in the middle of the session and left the school in 1995.

14. This Court, in a large number of cases, has already dealt with the issue of determination of the age of the prosecutrix in rape cases. In *Sunil v. State of Haryana* 1

, this Court while dealing with the question of determination of age of prosecutrix in a rape case has observed that whenever any primary evidence is absent for determination of the age of the prosecutrix, reports of the Dental Surgeon and the Radiologist would be helpful, as in criminal cases the conviction of an accused cannot be based on vague guess
1 AIR 2010 SC 392.

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work about the age of the prosecutrix.

15. In the present case, father of the girl does not want medical examination of his daughter and has not cooperated for determination of her age. Apart from this, the prosecutrix had married the appellant on 20th

May, 2003 and they had five children from the wedlock and living happily. Taking into consideration all these subsequent developments, we are of the opinion that it is not proper to convict the appellant at this stage more so when there are so many deficiencies in the prosecution case.

16. Consequently the impugned judgment is set aside and the appeal stands allowed accordingly.

.....J.

(N.V. RAMANA)

.....J.

(PRAFULLA C. PANT)

New Delhi,
March 31, 2017

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ITEM NO.37

COURT NO.11

SECTION IIC

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1572/2016
(Arising out of impugned final judgment and order dated 02/12/2014 in CRLAP No. 1564/2000 passed by the High Court Of Chhattisgarh At Bilaspur)

JEEVAN LAL

Petitioner(s)

VERSUS

STATE OF MADHYA PRADESH (NOW CHHATTISGARH) Respondent(s)
(with appln. (s) for exemption from filing O.T. and permission to file additional documents and interim relief and office report)

Date : 31/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

Dr. Rajesh Pandey, Adv.

Mr. Baijnath Patel, Adv.

Mr. Abhishek Pandey, Adv.

Mr. Nitin Bhardwaj, Adv.

Mr. Jitendra Kr. Pandey, Adv.

For Respondent(s)

Mr. Atul Jha, Adv.

Mr. Sandeep Jha, adv.

Mr. Dharmendra Kumar Sinha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[SUKHBIR PAUL KAUR] [S.S.R.KRISHNA]

A.R.-CUM-P.S. ASSISTANT REGISTRAR

(Signed order is placed on the file)