

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1383 OF 2009

Pekhan Ram

...Appellant

Versus

State of Chhattisgarh

...Respondent

O R D E R

The appellant faced trial for offences punishable under Sections 363, 366, 376 of the IPC and under Section 3(1)(xii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of allegation that on 13.12.2002 he kidnapped the prosecutrix Ku. Champa from the custody of her father Bhaktu Das and forced her to have sexual relationship with him despite the fact that she was below 16 years of age. The learned trial Judge, in Special Case No. 95 of 2003, after analyzing the evidence on record, opined that except the offence under Section 376 IPC no other offence had been proven by the prosecution. Be it noted, the court returned a finding that the sexual intercourse was with consent but as the prosecutrix was below 16 years of age, the accused was liable to be convicted under Section 376 IPC and, accordingly, convicted him for the said offence and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and, in default of payment of fine, to suffer six months additional simple imprisonment.

2. The learned Special Judge, in order to come to the conclusion about the age of the prosecutrix, referred to the evidence of Ku. Champa, PW-1, Bhaktu Das, father of the prosecutrix, PW-6, Bharat Lal Suryavanshi, PW-8, Head Master of the school who had produced the admission register Ext.-P-14 and the mark-sheet, Ext. P-6, which indicated the date of birth to be 20.1.1987. It is worthy to note that the learned trial Judge did not accept the opinion of Dr. Smt. S. Sawant, PW-15, who had presumed the age of the prosecutrix to be 18 years. The trial Court determined the age of the girl to be 13 years after referring to series of decisions and many other aspects.
3. The High Court, on reappraisal and reappraisal of the ocular and documentary evidence on record, has opined as follows: -
"I have perused the birth certificate Ex.P-26-A proved by Kotwar Salik Ram PW-18 and also the evidence of Manglu PW-17. I am of the considered opinion that the testimony of Manglu PW-17 as also the Kotwar Salik Ram PW-18 relating to the date of birth of the prosecutrix being 24.07.1987 is wholly un rebutted and worthy of credence. The entry in the School Admission Register Ex.P-14-A also shows that the prosecutrix was studying in Class-VIIth when she left the school on 31.07.2002. This also shows that the prosecutrix was below 16 years of age on the date of occurrence i.e. 13.12.2002. The testimony of Bhaktu Ram PW-6 also establishes that the prosecutrix was aged less than 16 years on the date of occurrence."
4. On a perusal of the impugned judgments and material brought on record, we find that the reasons ascribed by the learned trial Judge as well as by the High Court are absolutely cogent and based on proper appreciation of evidence. The only aspect that was highlighted by the defence is the opinion of Dr. Smt. S. Sawant, PW-15. On a perusal of her evidence it is manifest that she had estimated the age of the prosecutrix only on physical examination. Thus, on one hand there is an opinion of the doctor and on the other there are series of documents. Regard being had to the factual scenario, we are inclined to think that the High Court has correctly relied upon the primary

evidence, namely, the documents which have been duly proven and not accepted the opinion of the doctor.

5. In the result, we do not find any substance in this appeal and, accordingly, the same stands dismissed.

.....J.
[Dr. B. S. Chauhan]

.....J.
[Dipak Misra]

New Delhi;
May 14, 2013
ITEM NO.103

COURT NO.2

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1383 OF 2009

PEKHAN RAM

Appellant (s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

(With office report)

Date: 14/05/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA

For Appellant(s) Mr. Ravi Prakash Mehrotra, Adv.

For Respondent(s)

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

The appeal is dismissed in terms of the signed order.

| (NARENDRA PRASAD)
| COURT MASTER

| | (M.S. NEGI)
| | COURT MASTER

(Signed order is placed on the file)