

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQUITTAL APPEAL NO. 26 OF 2014**

Ku. Renuka Jangde, D/o Shri Puna Ram Jangde, aged about 18 years,
R/o Village Dhobnikala, Police Station Navagarh, District Bemetara,
Civil and Revenue District Bemetara (C.G.)

... Appellant**Versus**

1. State of Chhattisgarh, Through: Station House Officer, Police
Station Navagarh, District : Bemetara (C.G.)

2. Kishore Kumar S/o Lav Kumar, aged about 23 years, R/o Village
Dhobnikala, Police Station Navagarh, District Bemetara, Civil and
Revenue District Bemetara (C.G.)

... Respondents

For Appellant	:	Mr. K.K. Singh, Advocate.
For Respondent No.1	:	Mr. Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgement on Board****Per NAVIN SINHA, C.J.****27/08/2015**

1. The present appeal has been filed by the Prosecutrix challenging the acquittal of Respondent No.2 of the charges under Sections 366 and 376 IPC. Respondent No.2 was convicted under Section 363 IPC only by the Additional Sessions Judge, Bemetara, dated 21.11.2013 in Sessions Trial No. 49 of 2012 and sentenced to one year and seven months rigorous imprisonment with fine of Rs.1000/-.

2. Learned Counsel for the Appellant submitted that she was a minor below 16 years of age. It has come in her evidence and that of her mother that she was kidnapped and forcibly taken away for purpose of marriage. The mother of the Prosecutrix was also injured. There has

not been proper appreciation of evidence in the judgement under appeal because of which there has been miscarriage of justice. The Prosecutrix was also kept in illegal confinement for two months. Reliance was placed on 2011 (6) SCC 111 (Murugan alias Settu v. State of Tamil Nadu) and 2011 (10) SCC 192 [Mohd. Imran Khan v. State Government (NCT of Delhi)], that if the Prosecutrix was below the statutory age, the question of consent was irrelevant.

3. Counsel for the State submitted that the Appellant has not questioned his conviction under Section 363 IPC with regard to the same incident which lends credibility to the allegations of the Prosecutrix.

4. We have gone through the judgement under appeal. It reveals that the Prosecutrix and Respondent No.2 were known to each other. She had written love letters to Respondent No.2 and acknowledged her hand-writing in Court also. She claimed to have stopped meeting Respondent No.2 because he started to have an affair with another girl. Exhibits D-1 and D-2 were new year cards again containing amorous materials exchanged between the two. It is difficult to believe that Respondent No.2 jumped into the house of the Prosecutrix at night when all her family members were home, but yet no one could stop Respondent No.2. In the facts and circumstances of the case and the evidence as discussed, we find it difficult to hold that the Trial Court has committed any error by acquitting Respondent No.2 of the charges under Section 366 and 376 IPC holding that the Prosecutrix had gone of her own volition and established physical relations voluntarily. In absence of any challenge to the conviction under Section 363 IPC we are not required to consider the same.

5. The prosecutrix and her mother did not put forth any firm evidence with regard to her date of birth for conclusively establishing that she was below 16 years of age on the date of occurrence. In that event, consent may have become irrelevant. PW-11, Dr. Rajshree Deodhar, who examined the prosecutrix for her age opined that she was above 16 years, but below 18 years. Section 376 IPC has therefore no application. In view of the conclusion of the Trial Court that the parties were known to each other and that the prosecutrix went voluntarily with the Respondent, Section 366 IPC also has rightly been held to be inapplicable.

6. The two judgements relied upon on behalf of the Prosecutrix are clearly inapplicable as there was conclusive evidence by way of municipal certificate and the birth registration certificate of the Prosecutrix being below the age of 16 years holding that her consent was immaterial. If the Prosecutrix was above the age of 16 years, her consent becomes material.

7. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge