

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No.48 of 2008

Santosh @ Chetanlal S/o Mansaram Sinha, aged about 19 years, R/o Sakin, Durg Kondal, P.S.Durg Kondal, District Kanker (C.G.).

--- Applicant

Versus

State Of Chhattisgarh.

---Non-applicant

For Applicant	:	Shri Shrawan Kumar Chandel, Advocate.
For State	:	Shri Anil S.Pandey, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/10/2017

1. Present is the jail appeal preferred by the applicant assailing the judgment of conviction dated 31/01/2006 passed by the Additional Sessions Judge, Bemetara, District Durg (C.G.). Vide the said impugned judgment, the trial court found the applicant guilty of committing the offence under Section 376 and have sentenced him to undergo R.I. for seven years and fine of Rs.1,000/-.
2. The case of the prosecution is that, the present applicant had physical relationship with the minor prosecutrix, aged around 15 years for continuous period between 17/07/2005 to 22/07/2005.
3. The counsel for the applicant submits that, the only issue which the applicant intends to question is the veracity of the finding of the age of the prosecutrix declaring her a minor. According to the counsel for the applicant, there is a conflict between the date of birth as has been mentioned in the Kotwali Register and the date of birth mentioned in the school certificate. He further submits that, in the Kotwali Register, the age of the prosecutrix has been mentioned as 10/01/1990 whereas in the

school certificate, the age has been reflected as 10/09/1990. Hence, the said discrepancy should have been appreciated by the trial court and the benefit of doubt should have been given to the applicant, as according to the counsel for the applicant, except for the age factor, the entire deposition of the prosecutrix clearly reflects that, she was a consenting party to the alleged physical relationship that the accused had with the prosecutrix and thus prayed for the quashment of the impugned judgment of conviction.

4. The State counsel submits that, the prosecution in the present case has been able to lead sufficient evidence by which the age of the prosecutrix has been proved and established proving the prosecutrix to be a minor.

5. According to the counsel for the State, once when it is established that the prosecutrix was a minor irrespective of whether she had given a consent or not, the same would not give any advantage to the accused person.

6. Having considered the rival contentions put forth on either side and considering the evidences which have come on record, undisputedly, there are two date of births reflected in the evidence. One is 10/01/1990 as per the Kotwali Register and the other is 10/09/1990 as per the school certificate.

7. Even if the contention of the learned counsel for the applicant is accepted, even then if both the date of births are taken into consideration, the prosecutrix would still remains to be aged around 15 and 1/2 years which means she would still be a minor.

8. Thus, the said contention raised by the counsel for the applicant does not have much force for taking a different view than what has been taken by the trial court while passing the impugned award.

9. In view of the aforesaid observation, this court does not find any strong case made out calling for interference with the impugned award.

10. The appeal thus fails and is accordingly rejected.

11. It has been informed that the accused in the instant case has been released from jail after completion of sentence on 05/01/2011. Hence, no steps has to be taken.

Sumit

**Sd/-
(P. Sam Koshy)
Judge**