

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 249 of 2010**

- Rajendra Kumar Urao S/o Shiv Charan Urao aged about 20 years, r/o village Sawala Chitakahi Para, Distt. Korea (CG).

---- Appellant

Versus

- State of Chhattisgarh through Incharge, PS Khadagawa, District Korea (CG).

---- Respondent

 For the Appellant : Mrs. Usha Chandrakar, Advocate.
 For the respondent/State : Ms. K. Tripti Rao, PL

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****20-09-2018.**

1. This appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred against the judgment dated 19-3-2010 passed by Additional Session Judge, Manendragarh, Session Division Korea, in Sessions Trial No. 91 of 2009 wherein the said court convicted the appellant for commission of offence under Sections 363 and 366 of the IPC and sentenced him to undergo RI for five years and fine of Rs.1000/- on each count with default stipulations.
2. In the present case, prosecutrix is PW/1. PW/2 Rita Bai is her mother and PW/3 Chhotelal is her father. Both have not stated about the date of birth of prosecutrix. No one examined to establish her date of birth through school register. No

Radiology examination was done and age was not ascertained by that examination. In absence of oral and documentary evidence, it was not established that prosecutrix was below 18 years on the date of offence i.e., 29-5-2009.

3. To substantiate the charge under Section 363 of IPC, it has to be established by the prosecution that prosecutrix is taken or enticed by the appellant from lawful guardianship of her parents. When in the present case, age of the prosecutrix is not proved to be below 18 years, question of taking her from lawful guardianship does not arise. The evidence regarding age is lacking, and therefore, charge under Section 363 of IPC is not established.
4. PW/1 prosecutrix deposed before the trial Court that she stayed for one month with the appellant in her house. She further deposed that she was free to move in any direction while staying in the house of the appellant. From her evidence it is established that there was long stay of the prosecutrix in the house of the appellant and she was not confined to any place. When she was free to move to any direction for a period of one month, it cannot be said that she stayed with the appellant without her consent or against her will. Other piece of evidence is corroborative in nature, because the case of the prosecution is solely based on the statement of the prosecutrix. When prosecutrix stayed at her will with the

appellant and there is no evidence that the appellant seduced or forced her for physical relation, charge under Section 366 of IPC is also not established. Finding recorded by the trial Court is not based on proper appreciation of evidence and same is not liable to be sustained.

5. Accordingly, the appeal is allowed. Conviction and sentence imposed on the appellant by the trial Court is set. He is acquitted of the charge under Sections 363 and 366 of the IPC. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju