

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arising out of judgment dated 24-7-2001 passed by the Special Judge,
Raipur, in Spl. ST No.176/2000

CRA No. 710 of 2001

1. Girdharilal, S/o Virsingh Patel, aged about 18 years, Sakin - Dobpali,
PS Pithora, Dist. Mahasamund (CG).

---- Appellant**Versus**

1. State of Chhattisgarh, through PS Pithora, Dist. Mahasamund (CG).

---- Respondent

For Appellant

For Respondent/State

Shri Vikram Dixit, Advocate

Shri A.S. Kachhawaha, Addl. Adv. General
with Shri Rajendra Tripathi, Panel Lawyer

Judgment on Board**By****Prashant Kumar Mishra, J.****27/03/2018**

1. Appellant has been convicted for the offence punishable under
Section 376 of the Indian Penal Code (IPC) and has been sentenced
to undergo RI for five years and to pay fine of Rs.5,000/-, in default
of payment of fine to further undergo RI for six months for
committing forcible sexual intercourse with the prosecutrix (PW-2) on
promise to marry.

2. The First Information Report (FIR) (Ex.P/3) was lodged on 13-9-2000 alleging that on 12-9-1999 i.e. about one year prior to the date of FIR the accused committed forcible sexual intercourse with the prosecutrix on promise to marry and, thereafter, repeatedly sexually exploited her in the agricultural field for which she became pregnant and has given birth to a baby girl on 6-9-2000. Subsequently, the accused has refused to marry her.
3. Based on her Court statement and the report of the radiological examination, the trial Court has convicted the appellant for commission of offence punishable under Section 376 of the IPC while acquitting him from the offence under Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
4. Shri Vikram Dixit, learned counsel appearing for the appellant, would submit that in absence of cogent and reliable evidence proving that the age of the prosecutrix was less than year 16 years of age on the date of the incident, coupled with delay in lodging the FIR, the finding of guilt recorded by the trial Court is illegal being contrary to law.
5. Per contra, Shri A.S. Kachhawaha, learned Addl. Advocate General appearing for the State, would support the impugned judgment.
6. There being considerable delay of about a year in lodging the FIR and for the fact that the prosecutrix has stated in the FIR itself that she

was subjected to sexual intercourse on number of occasions on promise to marry, the age of the prosecutrix was the most crucial issue to be settled by the trial Court.

7. Concededly, the prosecution has not filed any Kotwari register or any other certificate carrying entry concerning the date of birth of the prosecutrix. In her statement she has not informed the Court about her date of birth, as she is illiterate.
8. Anandram (PW-3) is the father of the prosecutrix. In his examination-in-chief he would depose that the approximate age of his daughter is about 16 years. Thus, Anandram (PW-3) is also not aware of the date of birth or the exact age of the prosecutrix.
9. This leaves the Court with the opinion of the Radiologist Dr. (Smt.) Alka Pardal (PW-7), who has submitted her report (Ex.P/10) opining that the approximate age of the girl is 15-16 years. This opinion of the Radiologist is of no assistance to the prosecution because the witness has not described the findings of the radiological examination inasmuch as it is not written as to the age of appearance and the age of fusion or complete development of the particular bones/joints on the basis of which the approximate radiological age of a person can be determined.
10. In absence of such features or findings having been narrated in the report (Ex.P/10), it remains a subjective conclusion of the Doctor.

The radiological examination concerning the age of a person is by itself an opinion, which is not conclusive in nature, but depends on corroboration by other evidence, however, in the case at hand, this evidence itself is not complete as it is not backed and based on the findings as mentioned above.

11. In view of the above discussion, there is absolutely no evidence to conclude that the prosecutrix was less than 16 years of age on the date of incident.
12. The question now remains to be considered is – whether if the prosecutrix was not less than 16 years of age on the date of incident, the offence under Section 376 of the IPC would still be made out ?
13. For considering this aspect of the matter, it is to be noticed that the FIR itself is delayed by about one year. The prosecutrix continued her physical relation with the appellant for a period of about one year. During this period she never objected to the relationship nor insisted the appellant to marry her after the first sexual encounter. The prosecutrix was, thus, the consenting party to the whole affair, therefore, she having not been proved less than 16 years of age, the offence under Section 376 of the IPC is not made out.
14. The finding recorded by the trial Court to the contrary is illegal and perverse, therefore, it deserves to be set aside.

15. As a sequel, the appeal is allowed. Conviction and sentence imposed on the appellant under Section 376 of the IPC is hereby set aside. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri