

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 300 of 2010**

- State Of Chhattisgarh, Through Station House Officer,
Chandrapur, District Janjgir-Champa (CG)

---- Petitioner**Versus**

- Jhara @ Srilal Sanvara S/o Motichand Sanvara, Aged about 23
years, R/o Gopalpur, Thana Chandrapur, District Janjgir-
Champa (CG)

---- Respondent

For Appellant	Mr. R. Tripathi, Panel Lawyer
For Respondent	Mr. Keshav Dewangan, Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Order On Board By****Ram Prasanna Sharma, J.****9/4/2018**

1. Heard.
2. This appeal is directed against the judgment dated 5.8.2006 passed by the Additional Sessions Judge, Sakti, Sessions Division Bilaspur (CG) vide ST No.281 of 2005, wherein, the said Court acquitted the respondent for commission of offence under Section 324 and 376(1) of the Indian Penal Code, 1860, for wrongful confinement and commission of rape of the

prosecutrix.

3. In the present case, the prosecutrix is PW-1. Case of the prosecution is based on the statement of the prosecutrix (PW-1), Gurwari Bai (PW-2), who is the mother of the prosecutrix, evidence of medical experts, evidence regarding age of the prosecutrix and other corroborative piece of evidence recorded during investigation after registration of the FIR.
4. As per the version of the prosecutrix, she is aged 20 years. Gurwari Bai (PW-2), who is the mother of the prosecutrix, stated that age of the prosecutrix is 22 years. Though Dr. B.N. Dewangan (PW-18) opined on the basis of X-Ray report that age of the prosecutrix appears to be 13 years but in his cross-examination, he has admitted that there is chance of variation of 3 years in the age calculated on the basis of X-Ray report. Looking to the entire evidence of this witness, it is not established that the age of the prosecutrix was below 16 years on the date of the incident.
5. The prosecutrix deposed that she is having an affair with the respondent and the respondent made physical relation with her. PW-2 Gurwari Bai, who is the mother of the prosecutrix, also stated on the same line. She deposed that the prosecutrix was having an affair with the respondent. She has further admitted that due to said affair, she has lodged the report against the respondent.
6. From the statement of the prosecutrix, it is clear that she has

not resisted during physical relation. From the entire evidence of the prosecutrix, it is not safe to conclude that the physical relation was made against her will or without her consent. One report Ex.P/17 is filed with the charge sheet regarding medical examination of the respondent and in the said report, it is not opined by the expert that the respondent is capable to perform sexual intercourse.

7. On an over all assessment of the evidence adduced by the prosecution, it is not established that the respondent wrongfully confined the prosecutrix and then, committed sexual intercourse against her will or without her consent.
8. In our considered opinion, the view taken by the trial Court is one of the plausible view as per evidence on record and it would not be proper for us to disturb the finding recorded by the trial Court.
9. The appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)