

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 367 of 2010**

- State of Chhattisgarh, Through : The District Magistrate, District Rajnandgaon (C.G.).

---- Applicant**Versus**

- Manje @ Vijay S/o Mokhala Gond, aged about - 19 years, R/o Saraswati Nagar, Durg P.S. Durg, District Durg (C.G.)

---- Respondent

For Applicant/State	:	Shri Ravindra Agrawal, G.A.
For Respondent	:	None

Hon'ble Shri Pritinker Diwaker &
Hon'ble Smt Justice Rajani Dubey

Judgment on Board**Pritinker Diwaker, J****19/09/2018**

1. Challenge in the present appeal is to the judgment and order dated 23.01.2007 passed by Additional Sessions Judge, Khairagarh (C.G.), in Sessions Trial No.46/2006 acquitting the respondent of the charge under Sections 363, 366 and 376 (1) of IPC.
2. The fact of the case are that on 23.02.2006 missing report Ex.P/18 was lodged by Manbha Bai (PW/8), mother of the Prosecutrix, alleging in it that the Prosecutrix went missing from 20.02.2006 and on 10.03.2006 she was recovered from the custody of accused/respondent. Based on her statement, FIR

(Ex.P/19) was registered under Sections 363, 366 and 376 IPC against the accused/respondent. After filing of the charge sheet, the trial Court framed the charge under Sections 363, 366 and 376 (1) of IPC against accused/respondent.

3. So as to hold the accused/respondent guilty, the prosecution has examined 13 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent as mentioned in para-1 of this judgment. Hence, this acquittal appeal.
5. Learned State counsel submits that the trial Court has erred in law in acquitting accused/respondent even when there is ample evidence against him.
6. We have heard learned State counsel and perused the material available on record.
7. From the statement of the Prosecutrix (PW/7), it is apparent that she was a consenting party to the act of the accused/respondent and had never offered any protest and resisted while she was being taken by him. That apart, there is no legally admissible evidence on record showing the Prosecutrix to be minor. Even, medical report (Ex.P/14) of the Prosecutrix does not support the prosecution case.
8. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion of acquitting the accused/respondent of the charges levelled against him by extending him benefit of doubt. We find no illegality in the order impugned acquitting the respondent particularly when

there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

9. Accordingly, the acquittal appeal preferred by the State is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE