

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****SB: Hon'ble Mr. Justice Ram Prasanna Sharma****CRA No. 1159 of 2003**

- Bahadur s/o. Shukhlal Dhobi aged about 21 years r/o. Village Bijemar, PS Churiya, District Rajnandgaon (CG).

**---- Appellant.****Versus**

- State of Chhattisgarh through PS Dongargarh, Distt. Rajnandgaon (CG).

**---- Respondent**

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| For Appellant        | : | None                         |
| For respondent/State | : | Mr. V.B. Singh, Panel Lawyer |

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**Oral Judgment****(31-3-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-9-2003 passed by the Sessions Judge, Sessions Division Rajnandgaon (CG) in ST No. 103 of 2003 wherein the said court convicted the appellant for offence punishable under Sections 363, 366 and 376(1) of the IPC, 1860 and sentenced to undergo RI for three years, RI for five years and RI for ten years respectively with a direction to run all the sentences concurrently.
2. In the present case, prosecutrix is PW/1. PW/2 Pradeep Kumar is father of the prosecutrix. As per version of Pradeep Kumar (PW/2),

date of birth of the prosecutrix was registered in the book of Kotwar at his instance. One photo copy of Kotwar book was produced before the trial Court in which number of over-writings are done and even the name of the child is not clear looking to the photo copy of alleged birth register. No Kotwar who recorded the date of birth of the prosecutrix is examined before the trial Court and looking to the over-writings it is difficult for this court to calculate the age of the prosecutrix on the basis of said document. Dr. S. Khare (PW/9) who examined the prosecutrix, opined that the age of the prosecutrix is appearing not less than 17 years, but there is variation of two years on either side, the age of the prosecutrix may be 19 years. From the record, it is not proved that the prosecutrix was minor i.e., below 18 years on the date of incident as per Indian Majority Act, 1875.

3. As per version of prosecutrix (PW/1), she visited Bichhotola, Ramtola, Chichola and Nagpur with the appellant and she stayed with him in the house of one of the relatives of the appellant. She admitted in her cross-examination that she did not narrate anyone during traveling that the appellant enticed her and committed illegal act against her will and without her consent. She has further admitted that when she stayed with the appellant at Nagpur, appellant used to visit outside for work and she remained alone in the said house, but she did not inform anyone in the said house regarding any criminal act done by the appellant.
4. Looking to the entire version of prosecutrix (PW/1), it is not safe to hold that she stayed with the appellant without her consent or against her will and any physical relation was made by the appellant illegally.

When it is not proved that the prosecutrix is minor, the question of enticing her from lawful guardianship does not arise. Again when physical relation is maintained with consent, the same does not fall in the definition of rape as defined under Section 375 of the IPC. It cannot be held that the appellant enticed her and forced her to marry with the appellant or to commit intercourse with her.

5. Considering all the facts and circumstances of the case, I am of the view that the finding arrived at by the trial Court is not sustainable. Accordingly, the appeal is allowed and the conviction and sentence passed by the trial Court is set aside. Appellant is acquitted of the charges framed against him.

Sd/-

**(Ram Prasanna Sharma)**  
**Judge**

Raju