

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 90 of 2012

Kamla Haldar @ Kamla Mahaldar, Aged about 16 years, D/o. Krishnapad Mahaldar, being minor through her father Krishnapad Mahaldar, aged about 50 years, S/o. Late Kirad Mahaldar, R/o. P.V. 120 Thana, Pakhanjore, District Kanker.

---- Appellant

Versus

1. State of Chhattisgarh Through Police Station Pakhanjoire, District Uttar Bastar, Kanker.
2. Tapas Haldar, Aged about 20 years, S/o. Prafaul Haldar, By occupation Labour R/o. P.V. 120, Panshjur, Thana, R/o. P.V. 120, Panshjur, Thana Pankhanjore, District Kanker.

---- Respondents

For the Appellant	:-	Mr. Parag Kotecha, Advocate
For the Respondents	:-	Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Vimla Singh Kapoor

Order on Board By
Prashant Kumar Mishra, J.

03.07.2018

1. This acquittal appeal has been preferred by the victim against the impugned judgment of acquittal whereby the respondent has been acquitted of the charges under Section 376 of the IPC.

2. Admittedly, the appellant had an affair with the respondent which led to physical relation between them and thereafter she was impregnated which was informed to the respondent on which he agreed to marry the appellant. After marriage, the appellant and the respondent stayed together for about three months, but later, the respondent started harassing the appellant for demand of dowry. Written complaint

ExP-1 was lodged on 10.01.2011 not for taking action for commission of rape but for taking action against the respondent for dragging her out of her marital home after marrying her during her minority.

3. The trial Court has opined that although the prosecutrix claims to be less than 16 years of the age at the time of occurrence. But, the mark sheet ExP-3, mentioning her date of birth as 07/07/1995 has not been proved by examining any teacher or any other employee of the school where Dakhilkharij register or original of mark sheet is available.

4. Having heard learned counsel for the parties, we are of the view, that the prosecution has failed to prove that the prosecutrix was less than 16 years of the age at the time of occurrence. Admittedly, the prosecutrix was not referred for ossification test nor there is any primary evidence proving that she was less than 16 years of the age on the date of occurrence.

5. For all the aforesaid reason, we are not inclined to admit this acquittal appeal, it deserves to be and is hereby dismissed.

Sd/-

Sd/-

Judge

Judge

Prashant Kumar Mishra

Vimla Singh Kapoor