

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 170 of 2011**

Laxmi Prasad, aged about 22 years, S/o Bhaiyalal, R/o Patelpara, Bardar, Thana Khadgawa, District- Koriya (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, Through – Police Station- Khadgawa, District- Koriya (C.G.)

---- Respondent

For Appellant : Mr. Parag Kotecha, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

28/11/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 11.02.2011 passed by 3rd Additional Sessions Judge (F.T.C.), Manendragarh, District- Koriya (C.G.) in Session Trial No. 64/2010, wherein the said court convicted the appellant for commission of offence under Sections 363 & 366 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- on each count with further default stipulations.
2. In the present case, prosecutrix is PW-5. It is alleged that on 20.03.2010 at about 8:00 p.m., the appellant had taken the prosecutrix from lawful custody of her parents on allurance of marriage and thereafter, they went to many places where the appellant committed sexual intercourse with the prosecutrix. Matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) Age of the prosecutrix is not proved by any kind of evidence, therefore, it is not proved that on the date of incident i.e. on 20.03.2010, the prosecutrix was below 18 years and was in custody of her parents.
 - (ii) There is no evidence to involve the appellant in crime in question. It is not a case where the appellant has forcibly or otherwise taken the prosecutrix, therefore, offence under Sections 363 & 366 of IPC are not made out.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. The date of birth of the prosecutrix is not proved by evidence of birth register. School record is also not proved by any of the person from school. No radiological examination was conducted in the present case to establish age of the prosecutrix. Kamla Bai (PW-7) who is mother of the prosecutrix, did not depose date of birth of the prosecutrix or her birth year. Father of the prosecutrix is not examined before the trial court.
6. In view of this Court, date of birth of the prosecutrix should be proved by historical document like birth certificate or school register, but that is not done in the present case. Looking to the entire evidence, it is not proved that the prosecutrix was below 18 years on the date of incident. As her minority is not proved, it

is also not proved that she was taken or enticed from lawful guardianship, therefore, offence under Section 363 of IPC is not established.

7. The prosecutrix (PW-5) has deposed before the trial court that she visited with the appellant in many places. As per version of the prosecutrix (PW-5), she traveled with the appellant in a bus in which 35-40 persons were traveling to whom she did not narrate that the appellant has kidnapped her and intended to compel her for sexual intercourse.
8. Looking to the evidence of the prosecutrix (PW-5), it may be inferred that she visited with the appellant on her own will, therefore, evidence is not sufficient to hold that the appellant had intended to compel her to marry or seduced her to sexual intercourse, therefore, charge under Section 366 of IPC is also not established.
9. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 363 & 366 of IPC.
10. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order is required.

Sd/-
(Ram Prasanna Sharma)
Judge