

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1085 of 1999**

Dilip Kumar, S/o. Kartik Ram, aged about 27 years, by caste Satnami, R/o. Village Charpara, Police Station and Tahsil Malkharoda, Distt. Janjgir Champa (CG)

---- Appellant

Versus

- The State of Madhya Pradesh (Now Chhattisgarh) through the District Magistrate, Janjgir-Champa (CG)

---- Respondent

For the appellant : Smt. Indira Tripathi, Advocate
 For the respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 19.02.1999 passed by Additional Sessions Judge, Sakti, Session Division Bilaspur (CG) in Sessions Trial No.388/1998 wherein the said Court convicted the appellant under Sections 376 (1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.5000/- with default stipulations for commission of rape against the prosecutrix sometime in the month of March 1998 at Village Charpara, Police Station Malkharoda, Distt. Janjgir-Champa (CG).

2. As per the prosecution story, five months prior to 09.8.1998, the appellant committed rape with prosecutrix, aged

about 15 years, against her will and consent when she went to tube well to take bath.

3. To substantiate the charges, prosecution has examined as many as 18 witnesses. Gouribai (PW-2) is mother of the prosecutrix. But she has not stated date of birth of the prosecutrix. Gafur (PW-9), father of the prosecutrix, has also not stated the date of birth of the prosecutrix. For determining the age of the prosecutrix, the prosecution examined Dr. R. Jitpure (PW-18) who opined on the basis of the ossification test that the age of the prosecutrix is 16 years, but he admitted in the cross-examination that said determination would be subject to variation of three years on either side. On the basis of this statement, age of the prosecutrix may be 19 years and it cannot be said that on the date of incident, the prosecutrix was a minor.

4. Prosecutrix (PW-1) deposed that the appellant made physical relationship with her against her will and without her consent when she went to bore to take bath. From the statement of this witness, it is clear that she did not narrate the incident to anyone just after the incident and used to go the place to take bath frequently and there the appellant made physical relationship with her frequently. From the statement of this witness, it is established that she conceived pregnancy and delivered a child and from the statement of Dr. CK Singh (PW-11) she was carrying the pregnancy of 28-30 weeks, i.e. she was pregnant for more than seven months.

5. The date of incident is five months prior to 09.8.1998, but upon medical examination of the prosecutrix, it reveals that she was carrying pregnancy of more than seven months. From the statement of the prosecutrix and the medical evidence, it is established that relation between the appellant and the prosecutrix was more than seven months and she did not inform anyone about the incident and has not resisted during the time of physical relation.

6. On overall assessment of the evidence, it appears that relation between them was not without consent or against the will of the prosecutrix. It is stated by the prosecutrix that she did not reveal about the incident to anyone because of the fear of the appellant, but looking to the long physical relationship, explanation put forth by the prosecutrix is not acceptable. The trial Court did not appreciate the long physical relationship between the parties and therefore, finding recorded by the trial Court is not sustainable.

7. Accordingly, the appeal is allowed. Conviction and sentence passed against the appellant is hereby set aside. He is acquitted of the charges framed against him. The appellant is reported to be on bail, no further order is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE