

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.885 of 1999**

Kalyan Singh, aged 22 years, Son of Chhamman Singh Thakur,
R/o. Sarangpur Khurd, PS Kawardha, District Rajnandgaon (MP
Now CG)

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For the appellant : Ms. Aparajita Gaikwad, Advocate on
behalf of Shri Arun Kochar, Advocate
For the respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****12.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.3.1999 passed by Additional Sessions Judge, Khairagarh, Link Court Kawardha, Session Division Rajnandgaon (CG) in Sessions Trial No.49/1998 wherein the said Court convicted the appellant under Sections 363 and 366 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.2000/- with default stipulations on each count for kidnapping the prosecutrix with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry with the appellant or in order that she may be forced for illicit intercourse with him.

2. In the present case prosecutrix is PW-10. To ascertain the date of birth of the prosecutrix, Motilal Soni (PW-2), who was

posted as Incharge Headmaster at Jamunia Primary School, has been examined. He deposed that date of birth of the prosecutrix was mentioned in register as 06.01.1981. As per the prosecution case, date of incident is 15.4.1997 and, therefore, it is contended by the prosecution that the prosecutrix was minor on the date of incident as she was below 18 years of age as per Indian Majority Act, 1875. This witness deposed that he has not made any entry in the register, but the entry was made by one Incharge Headmaster Rajesh Kumar. From the statement of this witness, it is not established whether the prosecutrix was admitted by her parents or not. Ramkumar (PW-11), father of the prosecutrix, did not state the date of birth of the prosecutrix. Chameli Bai (PW-12), mother of the prosecutrix, also did not state the date of birth of the prosecutrix. From the statement of Ramkumar (PW-11) it is not established that he admitted the prosecutrix in the school situated at Village Sangpur. Though the school register of Sarangpur was produced before the trial Court, but the entries made in the Register were not proved. In the matter **Birad Mal Sighvi Vs. Anand Purohit** reported in **AIR 1988 SC 1796**, the Hon'ble Supreme Court held that the date of birth mentioned in the school register has no evidentiary value unless either the person who made the entry in the register is examined or the person on whose information the entry may have been made, is examined. In the present case, neither the person who made the entry nor the person who gave the information regarding the date of birth has been examined by the prosecution, therefore, entry

made in the school register has not been proved. No date of birth register has been produced before the trial Court and there is no ossification test report regarding the age of the prosecutrix. The prosecution is under obligation to prove the age of the prosecutrix as below 18 years on the date of incident but the same is not proved by the evidence of date of birth register or by any radiological examination report, therefore, offence under Section 363 IPC is not established.

3. As per the version of the prosecutrix, she visited many places along with the appellant. First she visited village Podi, then she visited village Khara and there she stayed with the appellant about 3 months. She further deposed that she visited Baihar, Balaghat and Sarangpur and stayed with the appellant as his wife. She further deposed that she did not make complaint to anybody in the said places that the appellant compelled her to marry him or forced her for illicit intercourse.

4. Looking to the entire evidence of the prosecutrix, it is not established that anything was done forcibly by the appellant. The prosecutrix admitted that the appellant is her uncle and looking to the relation between the parties, it cannot be inferred that anything is done against the will of the prosecutrix.

5. Age of the prosecutrix is not proved as below 18 years, hence it cannot be concluded that she has been kidnapped from the lawful guardianship of her parents and from the evidence adduced by the prosecution it is not established that she was

compelled to marry or forced for illicit intercourse, therefore offence under Section 366 IPC is not made out. Taking into consideration of the facts, the finding arrived at by the trial Court is not sustainable under the facts and circumstances and legal aspects of the case, therefore, the conviction and sentence passed by the trial Court is hereby set aside.

6. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Sections 363 & 366 IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE