

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 467 of 2002**

Shanker S/o Ghasi Ram Muriya, Age 22 years, R/o Village Parpa, Tokapall, P.S. Parpa (Frazarpur), District Bastar (CG)

---- Appellant**Versus**

The State Of Chhattisgarh Through Police of Police Station Frazarpur, District Bastar (CG)

---- Respondent

For Appellant : Shri R.N. Jha, Advocate

For State/ Respondent : Shri Bhaskar Payashi, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****18.4.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26th February, 2002 passed by the Sessions Judge, Sessions Division Bastar at Jagdalpur (CG) in ST No.309/2001, wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 and 376(1) of the Indian Penal Code for kidnapping with intent to compel or knowing it to be likely that she will be compelled to marry or for illicit intercourse and rape to the prosecutrix and sentenced to undergo R.I. for 3 years, R.I. for 5 years and R.I. for 7 years and to pay fine of Rs 500/- on each count with default stipulations.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. In the present case, prosecutrix is PW1. To substantiate the charge, prosecution has examined as many as 9 witnesses. It is contended on behalf of the appellant that age of the prosecutrix is not proved to be below 18 years and she was a consenting party and the report was lodged after one year of the incident when she gave birth to a child.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshalling of the evidence.

5. Loknath (PW4) is father of the prosecutrix. But in his examination-in-chief, he is not able to speak about the date of birth of the prosecutrix. In cross-examination he deposed that he admitted his daughter in School and her date of birth was recorded on the basis of Birth Register maintained by the village Kotwar, but the said Register was not produced before the trial Court and the date of birth is not established on the basis of Birth Register maintained by the Kotwar.

6. Balo (PW3) is mother of the prosecutrix. She is also unable to mention the date of birth of the prosecutrix. Though one School

Certificate (Ex.P/6) is produced before the trial Court, but no one is examined from the School to prove the said document.

7. Apart from this oral and documentary evidence there is evidence of Dr. Govind Singh (PW6) who based his report on radiology and as per version of this witness, age of the prosecutrix may be between 14 to 17 years. In cross-examination, he admitted that there is variation of 2 to 3 years of age calculated on the basis of radiology test. In this way, age of the prosecutrix may be between 19 to 20 years and she is not below 18 years. As per this witness, she is not minor as per the Indian Majority Act, 1875.

8. The prosecutrix has deposed that the appellant made physical relations with her since one year ago. She further deposed that whenever she met the appellant, he made physical relations with her in her house. She deposed that when she became pregnant, she narrated the same to the appellant and he assured to marry her, but he did not marry. Thereafter, she called a meeting in the village and lodged report against the appellant. From the statement of the prosecutrix, it is clear that she made report only when the appellant did not marry to her.

9. Looking to the long period of physical relations between the prosecutrix and the appellant, it cannot be held that the prosecutrix was not a consenting party. If the appellant would have married the prosecutrix, the report would not have been lodged.

10. On an overall assessment of the evidence, it is not proved beyond the shadow of doubt that the prosecutrix was minor on the date of incident. Again, it is not proved that the appellant compelled her to marry with him or forced for illicit intercourse. The finding arrived at by the trial Court is not sustainable as offence under Sections 363, 366 and 376(1) IPC is not established against the appellant.

11. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellant are set aside and he is acquitted of the charges framed against him.

12. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of 6 months from today in terms of Section 437-A Cr.P.C.

Sd/

(Ram Prasanna Sharma)
JUDGE