

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 373 of 2010**

State of Chhattisgarh, Through the Station House Officer, Police Station, Suhaila, Raipur, District Raipur (Chhattisgarh)

---- Appellant**Versus**

Sagar Singh Dhruv S/o Dilip Singh Dhruv, aged about 22 years, R/o Rani Tarai, P.S. Suhaila, Raipur, District Raipur (CG)

--Respondent

For Appellant/State	: Shri Arivind Dubey, Panel Lawyer
For Respondent	: Shri Anil Gulati, Advocate

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****Per Ram Prasanna Sharma, J.****15/05/2018**

1. The State has preferred this Acquittal Appeal against the judgment dated 29.1.2007, passed by the First Additional Sessions Judge, Baloda Bazar, Sessions Division, Raipur(CG) in Sessions Trial No.204/2006 wherein the said Court has acquitted the respondent of the charge under Section 376 (1) of the IPC for committing rape on the prosecutrix PW1, since one year from 30.8.2005 at village Rani Jarod.

2. To substantiate the charge prosecution has examined as many as 12 witnesses.

3. Prosecutrix is PW1. As per her version, the respondent assured her to marry and keep her properly for life long and maintained physical relations with her. She deposed that their relations were maintained for long, due to which, she conceived

from the respondent and gave birth to a child. She further deposed that when the respondent came to know that she is pregnant from him, he made distance with her and thereafter, one meeting was organized in the village, which the respondent did not attend. From the version of the prosecutrix it is clearly established that they have maintained physical relations for a long term and that is why the prosecutrix got pregnant. Version of the prosecutrix is unshaken during cross-examination and therefore, relation of the respondent and the prosecutrix is proved to be a case of consent.

4. Now the point for consideration is whether the prosecutrix was below 16 years of age on the date of incident.

5. As per Section 375 IPC, applicable at the relevant time, intercourse with a girl aged more than 16 years with her consent does not fall into the category of rape.

6. Bhurva Yadav (PW2) is father of the prosecutrix. He did not state regarding the date of birth of the prosecutrix. It is also not established from his statement that he recorded the date of birth of the prosecutrix in Birth Register or the Register maintained by the Kotwar in village. No birth register is produced before the trial Court to establish the date of birth of the prosecutrix.

7. Narayan Verma (PW5) is Teacher in Primary School, Guma. As per his statement, date of birth of the prosecutrix has been recorded in the School Register and according to the School Register, her date of birth is 4.1.1990. But this witness has admitted in cross-examination that the entry is not made by him and he is not aware of the fact as to who has recorded the date of

birth of the prosecutrix in the School Register and on what basis. For establishing the date of birth, the prosecution was under obligation to prove the same by cogent evidence. But no one is examined in this regard as to who had recorded the date of birth of the prosecutrix in School Register or who gave information.

8. Dr.Jagruti Agrawal (PW8) deposed that as per supposition, the prosecutrix might be aged about 14 years. But in cross-examination she has admitted that this age is only an assumption and there is no clinical examination for such supposition. No radiological test report was submitted before the trial Court to ascertain the age of the prosecutrix.

9. On an overall assessment, exact date of birth of the prosecutrix is not established and it is not proved that on the date of incident, the prosecutrix was below 16 years or 18 years of age. In absence of any proof of age when relationship is maintained by the parties is proved to be consensual, the trial Court was well within its jurisdiction to record the finding of acquittal and the same is not liable to be interfered with invoking jurisdiction of appeal.

10. The Acquittal Appeal has no substance. It deserves to be and is hereby dismissed.

Sd/
JUDGE
(Prashant Kumar Mishra)

Sd/
JUDGE
(Ram Prasanna Sharma)