

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 762 of 2004**

Santosh Kumar, S/o. Itwari Ram Chandrakar, Aged about 20 years,
R/o. Girdhari Nagar, Talabpar, Police Station Durg, District Durg,
Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through: Police Station Durg, District Durg,
Chhattisgarh

----Respondent

For Appellant	:	Ms. Sunita Jain, Advocate (Amicus appointed by the Court)
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/03/2018**

1. **T**here is no representation on behalf of the appellant when the matter is called on two occasions. The appeal is of the year 2004, as such the appeal as it is 14 years old. Considering seniority of the matter, this Court is compelled to request Ms. Sunita Jain, Advocate present in the Court to assist the Court for disposal of the appeal.
2. The High Court Legal Services Authority, Bilaspur is directed to ensure issuance of necessary powers and other formalities required for her to represent the Legal Aid Department in the appeal.
3. The matter was taken up after some times.
4. The appeal is preferred against the judgment dated 24.12.2003, passed by the 5th Additional Sessions Judge, Durg, Chhattisgarh, in Sessions Trial No. 127/2003, whereby the appellant was found guilty of an offence under Section 376 of Indian Penal Code and

was sentenced to undergo rigorous imprisonment for 7 years with fine of Rs.100/- with default stipulation.

5. The contention of the counsel for the appellant is that the plain reading of the statement of the prosecutrix itself would show that the prosecutrix in fact had voluntarily gone along with the appellant and that she was a consenting party to the entire relationship all along.
6. She further submits that there is no conclusive proof of the prosecutrix being a minor. It was also contended by the counsel for the appellant that the medical evidence of the prosecutrix also does not support the case of the prosecution and that the medical report clearly reflected that the Doctor had given a report of the prosecutrix being habitual to sexual intercourse. Thus prayed for setting aside of the judgment of conviction and for acquitting the appellant from the charges.
7. The State counsel on the contrary referring to the documents which have come on record submitted that there is ample evidence before the trial Court produced by the prosecution to establish that the prosecutrix in this case was a minor. She refers to the statement of PW/4 Mr. Nirmalkar, a clerk in the school, who had proved the "Dakhil Kharij Register" which is the school register, which reflects the date of birth of the prosecutrix and in the said school register the date of birth was reflected as 06.10.1988. The State counsel further refers to the statement of PW/7 Dr. A.K. Sahu, the Radiologist, who on the basis of X-ray report of the prosecutrix has opined the age of the prosecutrix to be aged around 14 years vide

exhibit P/10. With this the counsel for the appellant submits that once when the age of the prosecutrix has been proved to be 14 years i.e. she being a minor, even if there is an element of consent in her statement that is of no consequence and the appellant has been rightly convicted for the offence under Section 376 of the Indian Penal Code.

8. Having heard the contentions on either side and on perusal of record, so far as the date of birth of the prosecutrix is concerned, this Court has no hesitation in reaching to the conclusion that the prosecution has in fact been able to produce cogent evidence during the trial i.e. by leading the evidence of proving her age from the school register which is maintained i.e. exhibit P/3, which was proved by PW/4 reflecting the date of birth of the prosecutrix as 06.10.1988, which would bring the age of the prosecutrix around 13½ years on the date of incident. Likewise the prosecution has also examined PW/7 the Radiologist who had conducted the X-ray and given a report exhibit P/10 and stated the age of the prosecutrix to be 14 years, which matches with the entry which has been made in the school register. Thus the age of the prosecutrix has been conclusively proved by the prosecution that the prosecutrix was a minor on the date of incident.
9. Given the said facts and circumstances of the case, even if the arguments of the counsel for the appellant is accepted of the prosecutrix being a consenting party that is of no consequence and the allegation against the present appellant for the offence under Section 376 of Indian Penal Code stands proved and established.

10. Under the said circumstances, the finding of guilt by the trial Court cannot be found fault with and there does not appear to be any strong case made out by the appellant calling for any interference with the impugned judgment.
11. The appeal thus being devoid of merits stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved