

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 26 of 2009

- Vishnu Kumar Gond s/o. Dheluram Gond aged about 24 years, r/o village Saloni, Thana Arjuni, District Dhamtari (CG).

---- Appellant.

Versus

- State of Chhattisgarh Through The District Magistrate, Dhamtari, Distt.-Dhamtari CG

---- Respondent

For Appellant : Mr. Amiyakant Tiwari, Advocate.
For Respondent/State : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

22-10-2018

1. This appeal is preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 8-4-2008 passed by the Additional Sessions Judge, Dhamtari, (CG) in Sessions Trial No. 30 of 2007 wherein the said Court convicted the accused/appellant for commission of offence under Sections 366 and 376 (1) of the IPC 1860 and sentenced him to undergo RI for seven years and fine of Rs.500/- for offence under Section 366 of IPC and RI for seven years and fine of Rs.500/- for offence under Section 376(1) of IPC, with default stipulations.
2. In the present case, prosecutrix is PW/3. PW/4 Janaki Bai is mother of the prosecutrix, but she did not depose regarding date

of birth of the prosecutrix. PW/5 Kalyan Singh Banjare is father of the prosecutrix. He did not also depose regarding date of birth of the prosecutrix. PW/10- Ramji Dubey who is retired Teacher deposed that as per transfer certificate date of birth of the prosecutrix is mentioned as 11-6-1988, but he admitted in his cross examination that no record of the school was produced by him before the trial Court. As no record was produced before the trial court, date of birth of the prosecutrix is not proved on the basis of school register. Neither birth certificate of the prosecutrix was produced nor Radiological report was produced before the trial Court to ascertain the exact date of birth of the prosecutrix.

3. From the evidence of the parents of the prosecutrix and other record, it is not established that prosecutrix was below 18 years on the date of commission of offence i.e., 18-9-2003. For establishing offence under Section 363 of IPC, prosecution was under obligation to prove that the prosecutrix was below 18 years of age and she had been taken away or enticed away from lawful guardianship of her parents. As the age of the prosecutrix is not proved to be below 18 years of age, kidnapping from lawful guardianship is not established which is punishable under Section 363 of the IPC. PW/3 prosecutrix deposed that she stayed with the appellant for about 3 years. As per version of this

witness she recognised the appellant as her husband before the people at large.

4. Looking to her entire version, it cannot be said that she had been compelled for illicit intercourse with the appellant and physical relation was maintained between the parties against the will of the prosecutrix or without consent of the prosecutrix. Assessing the evidence in its entirety charge under Sections 366 and 376(1) of the IPC is also not established. The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.
5. Accordingly, the appeal is allowed. Conviction and sentence imposed upon the appellant by the trial Court is hereby set aside. The appellant is acquitted of the charge under Sections 366 & 376 (1) of the IPC. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_