

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 35 of 2009**

Narottam S/o Parasuram Deep aged about 24 years,
Resident of village Lalpur, Thana Bagbahara, District
Mahasamund (CG)

---- Appellant

Versus

State of Chhattisgarh through the District Magistrate,
Mahasamund, District Mahasamund (CG)

---- Respondent

For Appellant : Shri Sunil Sahu, Advocate

For Respondent/State : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****22/10/2018**

1. This appeal is preferred against the judgment dated 2.1.2009, passed by the Sessions Judge, Mahasamund (CG) in Sessions Trial No. 60/2008, wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 and 376(1) of the IPC and sentenced to undergo R.I. for 1 year and fine of Rs.500/-; R.I. for 2 years and fine of Rs.1,000/-; and R.I. for 7 years and fine of Rs.2,000/- with default stipulation.

2. In the present case, prosecutrix is PW1. Santu (PW2) is father of the prosecutrix. Smt. Shakuntala Agrawal (PW5), who is Upper Division Teacher in Govt. New Girls Middle School, Bagbahara, deposed before the trial Court that date of birth of the prosecutrix is

mentioned in School Register as 12.9.1994. As per version of this witness, the prosecutrix was admitted by her father, but Santu (PW2), father of the prosecutrix deposed (para 10) that he is not aware about the date of birth of the prosecutrix. No Birth Register was produced before the trial Court and no birth certificate was submitted and proved as well as no ossification test was conducted to ascertain the age of the prosecutrix. Case of the prosecution for determining the age of the prosecutrix is based on the date of birth recorded in the School Register, but father of the prosecutrix has not supported that the date of birth mentioned in the School Register is recorded on the basis of information given by him. As father of the prosecutrix is not aware of the date of birth of the prosecutrix, it is not proved that the date of birth recorded in the School Register is the exact date of birth of the prosecutrix. Therefore, it is not proved by the School Register that the prosecutrix was below 18 years of age on the date of offence i.e. 21.7.2008. For commission of offence under Section 363 IPC, it has to be proved that the prosecutrix was kidnapped from the lawful guardianship of her father who is below 18 years. As the age of the prosecutrix is not proved, offence of kidnapping from the lawful guardianship is not established.

3. The prosecutrix, PW1 has deposed that she stayed with the appellant for 3 days in a Hotel. As per her version (para 16) the appellant applied vermilion on her forehead, therefore, she treated him as her husband and then both of them have made physical relations. Looking to the entire evidence of the prosecutrix, it is

established that physical relations were maintained with the consent of the prosecutrix and the prosecutrix was worker with the appellant, who was Mason for a long. Both were known to each other. Therefore, staying of the prosecutrix with the appellant cannot be termed as without her consent or against her will. Again, physical relations were maintained with the consent of the prosecutrix, therefore, it is not a case where the appellant kidnapped or abducted the prosecutrix with intent that she will be compelled to illicit intercourse. Offence under Sections 366, 376 (1) IPC is also not established.

4. Accordingly, the appeal is allowed.

5. Conviction and sentence passed by the trial Court are hereby set-aside. The appellant is acquitted of the charges under Sections 363, 366 and 376 (1) of the IPC. **Sd/**

(Ram Prasanna Sharma)
JUDGE