

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.213 of 2009**

Rakesh Kumar Banjara, S/o. Kanhaiyalal Banjara, Aged about 20 years, Occupation Painter, R/o. Village Saddu, Thana Mowa, Distt. Raipur (CG)

---- Appellant

Versus

The State Of Chhattisgarh, through Station House Officer, Police Station Pandri Distt. Raipur (CG)

---- Respondent

 For the appellant : Shri Sanjay Agrawal, Advocate
 For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****24.10.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 07.3.2009 passed by 9th Additional Sessions Judge (FTC), Raipur (CG) in Session Trial No.89/2008 wherein the said Court convicted the appellant for commission of offence under Sections 363 and 366 of the Indian Penal Code and sentenced him to undergo Rigorous imprisonment for three years and four months and to pay fine of Rs.200/- and RI for three years and four months and to pay fine of Rs.200/- with default stipulations.

2. In the present case, the trial Court has acquitted the appellant for the charges under Section 376 IPC by concluding that the prosecutrix was a consenting party. To establish the charge under Section 363 IPC, it has to be established that the

appellant took or enticed the prosecutrix who was below the age of 18 years from her lawful guardianship. KS Koushik (PW-1) deposed that as per the School register date of birth of the prosecutrix is mentioned as 02.02.1991 but, in his cross-examination he admitted that the prosecutrix was not admitted before him and he is unable to tell as to who admitted the prosecutrix in the school. Therefore, date of birth of the prosecutrix is not established by the evidence of this witness. Bhana Bai (PW-4) is the mother of the prosecutrix, but she is unable to tell the date of birth of the prosecutrix. Sukhdev (PW-8) is the father of the prosecutrix and as per this witness, he is unable to tell the dates of birth of his other children except the prosecutrix (para 8). Looking to the evidence of this witness, it appears that he is telling the date of birth of the prosecutrix on imagination and therefore, date of birth of the prosecutrix is not established by the evidence of this witness also. No birth register was produced before the trial Court and no radiological examination was conducted to ascertain the age of the prosecutrix. In absence of sufficient evidence it is not established that the prosecutrix was below the age of 18 years on the date of incident i.e. on 07.3.2008. Therefore, kidnapping from lawful guardianship is not established.

3. From the evidence of the prosecutrix (PW-3) it is established that she is married with the appellant and she stayed with him in different places. She further deposed that (para 6) she married with the appellant with her own consent, therefore it is not a case where the prosecutrix was compelled to go with the

appellant and the appellant has compelled her for illicit intercourse.

4. Looking to the entire evidence adduced by the prosecution charges under Sections 363 & 366 IPC are not established.

5. Consequently, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Section 363 & 366 IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE