

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.237 of 2009**

Gautam Sonkar, S/o Hiralal, aged about 22 years, Caste Sonkar, R/o Gram Orma, Police Station Balod, District Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Balod, District Durg (CG)

---- Respondent

For Appellant : None

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

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

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 19.3.2009, passed by the Additional Sessions Judge, Balod, Sessions Division Durg(CG) in Sessions Trial No. 45/2008, whereby the appellant has been convicted under Sections 376(1) and 498-A of the Indian Penal Code, 1860 (for short the IPC) and sentenced to undergo R.I. for 7 years and fine of Rs.2000/-; and R.I. for 1 year and fine of Rs.1000/- with default stipulations. Both the sentences were directed to run concurrently.

2. As per the prosecution case, the accused/appellant made sexual relations with the prosecutrix on the temptation to marry her due to which, she carried pregnancy. The prosecutrix and the appellant stayed at the house of the appellant for some time, but thereafter, the appellant harassed her and denied to keep her as his wife. The matter was reported and investigated and the appellant was charge-sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.

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

4. Case of the prosecution is based on the statement of the prosecutrix, PW1. As per version of the prosecutrix, the appellant made frequent physical relations with her resulting in her pregnancy. Rajkumar (PW2) is father of the prosecutrix to whom she had informed about the incident only when she carried pregnancy. The appellant made frequent physical relations with the prosecutrix and she did not inform anyone about the incident for a long which shows that the relations between the appellant and the prosecutrix were not against the will or consent of the prosecutrix. Looking to the entire evidence, it is not established that the appellant maintained physical relations with the prosecutrix without her consent and against her will.

5. In the present case, date of incident as alleged in the First Information Report is May 2007. At that time as per Section 375 (6)

IPC, sexual intercourse with or without consent of a woman when she is under sixteen years of age was rape. But from the record and evidence of the prosecution it is clear that the prosecutrix was aged about 17 years when offence is alleged to have been committed. Therefore, the act of the appellant does not fall in the category of rape. Charge under Section 376(1) IPC is not established.

6. So far as offence under Section 498-A IPC is concerned, it is related to husband or relative of the husband of a woman subjecting her to cruelty. In the present case, the prosecutrix has not married with the appellant. From the entire evidence it is clear that she made physical relations with the appellant but the appellant did not marry with her. She herself has not deposed that the marriage has been taken place between her and the appellant, therefore, the prosecutrix is not wife of the appellant and Section 498-A IPC does not attract in the present case. Hence, offence under Section 498-A IPC is also not established.

7. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellant under Sections 376 (1) and 498-A of the IPC are hereby set aside. The appellant is acquitted of the charges framed against him. It is stated that the appellant is on bail. His bail bond shall continue for a period of 6 months in view of Section 437-A Cr.P.C.

Sd/

(Ram Prasanna Sharma)

JUDGE

