

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 3047 of 1999**

1. Preetam Kumar aged about 20 years s/o. Lakhanlal Deewar, r/o. MPEB Sub-Station, Nayapara Colony, P.S. Tarbahar, Sirgitti, District Bilaspur (MP) now CG.
2. Munnulal, aged about 20 years, s/o. Itwaridas Satnami, r/o. Ganeshnagar, P.S. Tarbahar, Nayapara, District Bilaspur (MP) Now CG. (died and deleted).

---- Appellants.

Versus

- The State Of Madhya Pradesh (now CG) through Station House Officer, P.S. Trbahar, District Bilaspur (CG).

---- Respondent

For appellant No.1	:	Shri Samir Singh, Advocate
For appellant No.2	:	Shri Rahul Kumar Advocate appears on behalf of Shri R.S. Marhas, Advocate.
For the State	:	Smt. Smita Jha, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**JUDGMENT ON BOARD****10-12-2019**

1. Appellant No.2 Munnulal, who has been convicted under Section 363 and 366 of IPC and sentenced to undergo RI for three years and fine of Rs.500/- and RI for four years and fine of Rs.500/- with default stipulation, died during pendency of this appeal. The appeal filed by him stands abated.

2. The appeal is preferred against judgment dated 29-10-1999 passed by Special Judge (Atrocities) Bilaspur in Special Criminal Case No. 31 of 1997 wherein the said Court convicted the appellant Preetam Kumar for commission of offence under Sections 363, 366 and 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 3 years and fine of Rs.500/-, RI for 4 years and fine of Rs.500/- and RI for 7 years and fine of Rs.1000/- with default stipulations.

3. As per version of prosecution, prosecutrix (PW/1) was minor on the date of incident i.e., between 10-4-1997 to 18-4-1997 at village Sirgitti and the appellant took her from custody of lawful guardianship of her parents for seducing her to sexual intercourse and committed sexual intercourse with her without her consent and against her will. The matter was reported and investigated. After completion of trial, appellant was convicted as mentioned above.

4. Learned counsel for the appellant submits as under:-

- I) Age of the prosecutrix is not proved to be below 18 years on the date of incident, therefore, charge under Section 363 of IPC is not made out.

- ii) Prosecutrix was a consenting party and moving with the appellant and she is not below the age of 18 years, therefore, offence under Section 366 and 376(1) of IPC is not made out.
- iii) The trial Court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

5. On the other hand, learned counsel for the State submits that the finding of the trial court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

6. Now the question of consideration before this Court is whether the prosecutrix (PW/1) was below 18 years of age on the date of incident i.e., on 10-4-1997.

7. To substantiate the charge, prosecution examined as many as 12 witness. PW/2 Chetankatta, who is father of the prosecutrix deposed that his marriage took place in the year 1980 and after one year of the marriage, prosecutrix was born out of wedlock. Though this witness deposed before the trial court that age of the prosecutrix was 14 years at the time of incident, but this witness is not able to state the date of

birth of the prosecutrix. PW/6 Dr. S. Chhatterjee who is Radiologist took x-ray of prosecutrix and assessed age of the prosecutrix to be 16 years. This witness admitted in his cross examination that there may be variation of three years of the age assessed through radiological examination. In this way, age of the prosecutrix comes out to 19 years in the month of incident, she has been examined by the Radiologist on 30-4-1997.

8. PW/8 Smt. Kamala Thakur, Head Master deposed before the trial court about date of birth of prosecutrix on the basis of school register and as per version of this witness prosecutrix was admitted in Class IV. This witness has not admitted the prosecutrix in Class I. She admitted her on the basis of mark-sheet of Class IV, therefore, date of birth of the prosecutrix who was admitted in Class first standard is not proved by any evidence. No birth register was proved to ascertain the age of the prosecutrix, therefore, on the basis of oral and documentary evidence, age of the prosecutrix is not proved to be below 18 years. As per report of Radiological examination her age may be 19 years.

9. On totality of the evidence, it is not a case that prosecutrix was below 18 years of age on the date of incident, therefore, it cannot be said that she was minor and was taken from her lawful guardianship of her parents and

charge under Section 363 of IPC is not established. As per version of prosecutrix (PW/1) she moved with the appellant after leaving her house and stayed with the appellant at Chuchiyapara and Masturi where appellant committed sexual intercourse with her. From her statement it is clear that she moved out of her house with bag and clothes and stayed with appellant at Masturi.

10. Taking into consideration the entire evidence of the prosecutrix, it is difficult to hold that physical relation was maintained without her consent and against her will. It is also difficult to hold that she has been seduced forcefully for sexual intercourse. If version of prosecutrix is of sterling quality, then same can be acted upon without corroboration and when she herself is a consenting party and her age is not proved to be below 18 years, charge leveled against appellant is not established.

11. Accordingly, the appeal is allowed. Conviction and sentence imposed by the trial court is set aside. The appellant Preetam Kumar is acquitted of the charges leveled against him. 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