

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 18-11-2019

Delivered on 17-12-2019

CRA No. 461 of 2001

- Lokesh Kumar @ Soyee Satnami s/o. Ramesh Kumar, Aged About 20 Years r/o. Village Badgaon, Police Station Dondilohara , CG.

---- Appellant

Versus

- The State of Chhattisgarh through Police Station Bondilohara, Dist. Durg (CG).

---- Respondent

 For Appellant : Mr. Sanjay Agrawal and Mr. Vijay Sahu Advocates

For respondent/State : Mrs. Smita Jha, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-4-2001 passed by the Additional Sessions Judge, Balod, District Durg, CG in Sessions Trial No. 161 of 1998 wherein the said Court acquitted the appellant under Section 376(1) of IPC and convicted the appellant for commission

of offence under Sections 363 & 366 of the IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.1000/- on each count, with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, prosecutrix was minor on the date of incident i.e., 1-2-1998 and she was in custody of her parents. The appellant took her from village Dadgaon on the date of incident at about 8.00 pm and seduced her to illicit sexual intercourse. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Age of the prosecutrix is not proved to be below 18 years, therefore, charge under Section 363 of IPC is not established.
- ii) Prosecutrix visited with the appellant many places and did not complain to anyone regarding criminal act of the appellant, therefore, version of prosecutrix is not sufficient to establish charge under Section 366 of the IPC.
- iii) The trial court has not evaluated the evidence in its true perspective, therefore,

finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The first question for consideration of this court is whether the prosecutrix was minor on the date of incident. PW/2 Sagarbai is mother of the prosecutrix. She is not able to tell in which year prosecutrix was born. PW/11 Laganuram Ratre, Head Master, Primary School, Badgaon, deposed before the trial court that on the basis of school register the date of birth of the prosecutrix is 13-11-1986 but it is not established that who admitted the prosecutrix in school and this witness has not recorded her date of birth. This witness has not deposed that entry has been made by him. No one was examined who admitted the prosecutrix in the school and author of the register, therefore, in absence of statement of the author and person who admitted the prosecutrix in school, entry in school register is not proved. PW/4 Dr. G.S. Thakur is radiologist who recorded age of the prosecutrix as 13 years on the basis of radiological examination, but the fact

remains that opinion of this expert is advisory in nature and from advisory nature of evidence, date of birth of the prosecutrix cannot be ascertained. On overall assessment of the evidence, age of the prosecutrix was not proved to be below 18 years on the date of incident.

7. Prosecutrix (PW/1) deposed before the trial court that she visited villages Raipura and Kheria with appellant on foot. She further deposed that she visited many places i.e., Durg, Power House and Bengadola with appellant. She deposed that she traveled in bus with appellant (para 13). She did not complain to any one regarding any criminal act of the appellant. She also deposed that she did not complain to any relative against the appellant (para 14).

8. From the entire evidence, it is established that prosecutrix visited many places with the appellant and she did not complain which shows that no act was committed against her will or without her consent, therefore, it cannot be held that the appellant took her from lawful guardianship of her parents and she has been seduced to illicit intercourse. On an over-all assessment, it is difficult to hold that the material available on record is sufficient to establish charge under Sections 363 and 366 of IPC.

9. Accordingly, the appeal is allowed. Conviction and sentence awarded to the appellant is hereby set aside. He is acquitted of the charge under Sections 363 and 366 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