

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 757 of 2010**

Vijay Bareth, aged about 29 years S/o Ramesh Bareth R/o Village Baikunthpur,
P.S. City Kotwali, Distt. Raigarh (C.G.)

----Appellant

Versus

State of Chhattisgarh., Through Police Station-City Kotwali, District-Raigarh
(C.G.)

---- Respondent

For Appellant	:	Mr. Abhishek Chandrawanshi, Advocate
For Respondent	:	Mr. Anand Verma, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

22/11/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 08/10/2010 passed in Sessions Case No. 59/2009 by the learned Third Additional Sessions Judge (Fast Track), Raigarh (C.G.) whereby the Appellant has been convicted under Section 363 of the IPC and sentenced to undergo RI for 7 years.
2. Facts of the case are that on 06/03/2009, minor daughter of the complainant namely Sukhiram went outside the home and did not come back, thereafter, Sukhiram lodged a missing report of her daughter in Police Station Kotwali, Raigarh (C.G.). On 24.04.2009, prosecutrix came back along with the Appellant, thereafter, Sukhiram lodged a report against the Appellant alleged therein that the Appellant by seducing her daughter abducted her minor daughter and committed sexual intercourse

with her. On the basis of said report, offence has been registered. Statement of the Prosecutrix as well as other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Section 363 & 376 of the IPC. As many as 11 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted the Appellant for the offence punishable under Section 376 of the IPC and only convicted under Section 363 of the IPC and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that without being any evidence available on record, Trial Court has wrongly convicted the Appellant only on the basis of presumption. It is further submitted by the Counsel that prosecutrix as well as all the other witnesses not supported the case of the prosecution and categorically stated that at the time of incident, the age of the prosecutrix was about 18-19 years, in spite of that Trial Court has wrongly arrived into a conclusion that prosecutrix was below 18 years of age and convicted him. Thus, finding of the Trial Court is not sustainable in the eyes of law.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and

perused the record minutely.

7. In her Court statement, the Prosecutrix (PW7) deposed that she went with the Appellant to Maharashtra and there they stayed for about one month thereafter both of them stayed in Chandmari, Raigarh (C.G.) in a rented room also. She categorically stated that nothing happened with her, the Appellant had not done anything with her. This witness turned hostile. She denied the suggestion made by the prosecution that at the time of incident she was aged about 17 years. The Trial Court has recorded her apparent age on the date of examination as 19 years. Budhyarin Bai (PW-8) and Sukhiram Yadav (PW-9), father and mother of the prosecutrix have stated that the age of the prosecutrix is about 18-19 years. PW-1 Dr. Divya Kiran Toppo who examined the prosecutrix also stated that since there were 30 teeth present in the mouth of the prosecutrix, she opined her age between 17 to 21 years. In her cross-examination also this witness has stated that the age of the prosecutrix may be between 19-20 years. There is no document available on record regarding her date of birth.
8. On minute examination of above evidence, it makes clear that in this case there is no any documentary evidence available on record with regard to the age of the prosecutrix. Prosecutrix, her mother and father Budhyarin Bai and Sukhiram Yadav categorically stated that at the time of incident age of the prosecutrix was about 18-19 years. As opined by Dr. PW-1 have also age of the prosecutrix between 19-20 years. Thus, there is sufficient evidence available on record on the basis of which it is well established that at the relevant time age of the prosecutrix was between 18-20 years, in spite of that without being any reason Trial Court

found the age of the prosecutrix 17 years which is not in accordance with evidence available on record. Thus, findings of the Trial Court in this regard is not sustainable. Since, the prosecutrix was above 18 years of age, therefore, no offence under Section 363 of the IPC can be made out against the Appellant. Thus, the impugned order dated 08/10/2010 passed in Sessions Case No. 59/2009 by the learned Third Additional Sessions Judge (Fast Track), Raigarh (C.G.) is quashed.

9. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. If the Appellant is on bail. His bail bond be discharged.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge