

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 650 of 2009**

Kamal Bhan Singh, S/o - Ram Karan Singh Gond, Aged about
– 26 years, R/o – Village Punji P.S. Janakpur, Korea (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through P.S. Janakpur, District – Korea
(C.G.)

---- Respondent

For Appellant : Smt. Usha chandrakar, Advocate
For State/respondent : Smt. Subha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****27/02/2019**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 27.08.2009 passed by Additional Session Judge, Manendragarh District Korea (C.G.) in Session Trial No. 17/2009, wherein the said court convicted the appellant for commission of offence under Sections 363, 366 of IPC, 1860 and sentenced for offence under Section 366 of IPC to undergo R.I. for 7 years and to pay fine of Rs. 10000/- with default stipulation.
2. In the present case though the appellant was convicted for offence under Section 366 of IPC 1860 against the prosecutrix (PW-1) but from the evidence of prosecutrix it is established that she had physical relation with the appellant for long on assurance of the appellant to marry with her. From the evidence of the prosecutrix it is also clear that she conceived from the appellant and gave birth to a child. Looking to the

evidence the trial court opined that charge under Section 376 (1) of IPC was not established.

3. The only question for determination before this court is whether the prosecutrix was minor on the date of incident that is one year before on 17th May, 2008 and whether she had been kidnapped with intend that she may be compelled to illicit intercourse or to marry with appellant against her will. Chotelal (PW-2) is father of the prosecutrix but he has not able to state the date of birth of the prosecutrix. From his evidence it is not clear as to what is the age of prosecutrix. No birth register or school register was produced before the trial court to establish date of birth of prosecutrix. Dr. Varsha Singh (PW-3) who examined the prosecutrix on 24th May, 2008 did not record any finding on the basis of radiological examination regarding age of the prosecutrix. She has admitted that her imagination can be varied on either side. It may be varied to 2 to 3 years.
4. Looking to the statement of this witness who stated that age of the prosecutrix is about 18years and there is scope of variation of three years it is not established that the prosecutrix was minor on the date of incident. In absence of any radiological examination or any birth register/ school register, there is nothing on record to established the age of the prosecutrix. Therefore, finding of the trial court regarding age of the prosecutrix that she is minor is not based on evidence

adduced by the prosecution and same is not liable to be sustained.

5. From the evidence of other prosecution witnesses and the prosecutrix, she stayed for long with the appellant on assurance of marriage. She stayed in different villages with the appellant and trial court opined that their physical relation is with consent and this finding has not been challenged which attains finality. It is not a case where the appellant kidnapped the prosecutrix to seduce her for illicit intercourse. On an overall assessment of evidence, charges leveled against the appellant is not established. Therefore, finding of the trial court is not sustainable.
6. Accordingly, appeal is allowed. Conviction and sentence passed by the trial Court is hereby set aside. The appellant is acquitted of charge under Sections 363, 366 IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for further period of six months from today in terms of Section 437-A of the CrPC.

Sd/-

(Ram Prasanna Sharma)
Judge