

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 670 of 2009**

Sitaram, S/o- Boloram, Aged about- 26 years, R/o- Gram Khajuri, Police Station- Kusumi, District- Sarguja (C.G.)

**---- Appellant**

**Versus**

State of Chhattisgarh, Through- District Magistrate, Sarguja, District- Sarguja (C.G.)

**---- Respondent**

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For Appellant : Mr. Suresh Thakre, Advocate

For State/Respondent : Mr. Afroj Khan, P.L.

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

**Judgment On Board**

**19/11/2019**

1. This appeal is preferred against judgment dated 23<sup>rd</sup> July, 2009 passed by Thrid Additional Sessions Judge (F.T.C.), Ambikapur, District-Sarguja (C.G.) in Sessions Trial No. 311/2008 wherein the said Court convicted the appellant for commission of offence under Sections 363, 366(A), 376 (1) and 506- B of the Indian Penal Code, 1860 and sentenced to undergo R.I. for 7 years with fine of Rs. 500/-, R.I. for 7 years with fine of Rs. 500/-, R.I. for 10 years with fine of Rs. 1000/- , R.I. for 7 years with fine of Rs.500/- respectively with default stipulations.
2. In the present case, the prosecutrix is PW-1. As per version of prosecutrix (PW-1) her age is 12 years. Mahendra (PW-3) is father of the prosecutrix, who deposed before the Trial Court that her age is 12 years. Version of prosecutrix is not challenged, therefore, on the basis of evidence of both

witnesses, it is established that her age was 12 years and she was minor on the date of incident i.e. 26<sup>th</sup> June, 2008.

3. Incident took place at village Khajuri forest where prosecutrix had gone to eat mangos where the appellant namely Sitaram take her without consent of her lawful guardianship i.e. mother and father. As per version of prosecutrix (PW-1) she had gone with one Suganti. Suganti deposed that she was threatened by the appellant for stabbing knife that is why she flees away from that place. Thereafter, the appellant taken her near a tree and committed forcefully sexual intercourse without her consent and against her will. Version of prosecutrix (PW-1) is supported by version of Suganti (PW-2) who accompanied the prosecutrix and threatened by the appellant. It is again supported by the version of Mahendra Father of the prosecutrix (PW-3). All the witnesses have been subjected to cross examination but nothing could be elicited in favour of defence. As per version of Dr. P.K. Sinha (PW-4) who found the appellant capable of intercourse and it is further supported by Dr. Shashikala (PW-6) who examined the prosecutrix and recorded finding that it may be a case of rape. All the witnesses have supported the version of prosecution and looking through affirmative statement, it is nothing on record to say that appellant has been falsely roped with charges. The prosecutrix does not depose that any threat was given by the appellant but Suganti deposed that threat was given to her. It

is not clear from her statement whether the appellant was in possession of knife.

4. To establish the charge under Section 506-B of IPC, it has to be established that person who gave threat was determined to execute his threat on spot. If it is not determined to execute his threat on spot, the words uttered by him is mere fury which has sound but no substances. In absence of substantial evidence, charge under Section 506-B has not established against the appellant. His conviction for this offence is hereby set-aside and he is acquitted of the said charge.
5. From the entire evidence, it is established that appellant kidnapped the prosecutrix and seduced her for illicit intercourse and committed rape with her. Act of the appellant falls within mischief of under Section 363, 366 (A) and 376(1) for which the Trial Court convicted him. After going through the entire evidence this Court has no reason to record contrary finding. Sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable therefore, sentence part is not liable to be interfered with.
6. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

**Sd/-**

**(Ram Prasanna Sharma)**  
Judge