

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03-12-2019
 Delivered on 17-12-2019

CRA No. 1305 of 2017

- Roshan Pardhi S/o Anjori Pardhi, Aged About 24 Years R/o Village Sakri, Police Station Mandir Hassaud, District Raipur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant : Mr. Basant Dewangan, Advocate
 For respondent/State : Mr. Aman Kesharwani, 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 6-7-2017 passed by 7th Additional Sessions Judge (FTC), Raipur CG in special criminal case No. 15 of 2017 wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/-, RI for ten years and fine of Rs.3000/- and RI for ten years and fine of Rs.3000/-

respectively with with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/2. As per version of prosecution, prosecutrix was minor on the date of incident i.e., 11-7-2016 and she was in custody of her parents. The appellant took her from lawful guardianship of her parents on 11-7-2016 from village Devpuri, Police Station Tikarapara, Raipur, CG and committed sexual intercourse with her without her consent and against her will. 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) Prosecution has completely failed to establish actual age of the prosecutrix on the date of incident, therefore, trial court has committed error in convicting the appellant for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012.
- ii) From the evidence of prosecutrix, it is clear that she was a consenting party in maintaining physical relation with the appellant and she stayed with the appellant at several places for considerable period of

about 4-5 months.

- iii) Prosecutrix has admitted that there is love affair between her and appellant but the trial court has not evaluated the evidence properly, 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. Smt. Amarika Gilhare (PW/3) who is mother of the prosecutrix and Kangal Gilhare (PW/4) who is father of the prosecutrix deposed that the prosecutrix was born in the year 2000 (date of birth is 18-2-2000) but no birth certificate was produced before the trial court to ascertain the age of the prosecutrix. Documentary evidence is preferable against oral evidence and Smt. Rekha Mahilanga (PW/1) who is Incharge Head Master of Government Middle School, Devpuri deposed that as per school register, date of birth of prosecutrix is mentioned as 18-2-2000. As per version of this witness, prosecutrix was

admitted in her school in Class-VIIIth on 24-6-2013. No school register was produced when prosecutrix was admitted in Class-1. From the evidence of this witness, it is not clear as to who made entry in school register. This witness has deposed (para 3) that she has not made entry in school register. No one was examined before the trial court who admitted the prosecutrix in Class-1, therefore, school register is not sufficient to establish the date of birth of the prosecutrix. In absence of documentary evidence and radiological examination, age of the prosecutrix is not proved to be below the age of 18 years on the date of incident.

7. Prosecutrix (PW/1) deposed before the trial court that she visited with the appellant at village Kopara and stayed with the appellant for fifteen days. Again she visited to village Kuthral with the appellant and stayed there for three months. She admitted in para 10 that she has not made any complaint to anyone in any of the place that the appellant took her forcefully. She has further admitted (para 13) that she stayed with the appellant in normal course and appellant introduced her as his wife, but she did not object to the version of the appellant.

8. Looking to the entire evidence of the prosecutrix, it is difficult to hold that she has been taken forcefully and the appellant seduced her for illicit intercourse. When she is not minor, Section 6 of the Act, 2012 has no application. In absence of proof of minority, it is not a case of taking her from lawful

guardianship of her parents and again it is not proved that she has been seduced by the appellant for 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, 363 of IPC and Section 6 of the Act, 2012

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 Section 6 of the Act, 2012. 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