

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1948 of 1999**

1. Govind Ram, S/o Rupal, Aged about 33 years, Caste Darji, R/o. Village Belgaon Sukvasopara, Police Station Sitapur, Distt. Surguja (MP) (Now Chhattisgarh)
2. Sirdhar @ Shridhar, S/o. Dilsai, Aged about 36 years, R/o. Village Tamta Police Station Pathalgaon, Distt. Jashpur (MP) (Now Chhattisgarh)

---- Appellants**Versus**

State of Madhya Pradesh through Police Station Sitapur,
Surguja (Ambikapur) (MP)(Now State of Chhattisgarh)

---- Respondent

For the appellants : Shri Brijesh Kumar Singh, Advocate
For the Respondent/State: Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****09.12.2019**

1. The appeal is preferred against judgment dated 22.6.1999 passed by Second Additional Sessions Judge, Ambikapur, Surguja in Session Trial No.246/1998 wherein the said Court convicted the appellants for the commission of offence under Sections 363, 366 and 376 (2)(g) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years; RI for five years and RI for 10 years and to pay fine of Rs.200/- respectively with default stipulation.
2. As per the version of the prosecution, prosecutrix was minor on the date of incident i.e. 18.4.1998 and both the appellants had taken her from custody of lawful guardianship to seduce her for

marriage and committed sexual intercourse with her without her consent and against her will. The matter was reported and investigated and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits that age of the prosecutrix was not proved to be below 18 years on the date of incident, therefore, charges under Section 363 IPC is not made out. The prosecutrix stayed with appellant Govind Ram for a number of days and visited many places with him which shows consent on the part of the prosecutrix. The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be reversed.

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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. The first question for consideration before this Court is whether the prosecutrix was minor on the date of incident i.e. 15.3.1998. Santara Bai (PW-2) is the mother of the prosecutrix, she is not able to tell the date of birth of the prosecutrix. Teacher Baleshwar (PW-10) produced the admission register of Primary School Radhapur in which date of birth of the prosecutrix was mentioned as 05.5.1980, but it is not clear from his evidence as to

who brought the prosecutrix for admission in the school and who entered the date of birth of the prosecutrix in the school register. Therefore, date of birth on the basis of said document is not established before the trial Court and it is also not established that the prosecutrix was minor on the date of incident.

7. As per the version of the prosecutrix (PW-1), she went with the appellants from village Guturma to Tamta which is at a distance of 7 km. From her statement it is clear that she stayed in the house of Sirdhar for about 12 days where appellant Govind made physical relation with her. From her evidence it is not clear whether she complained against the appellant Govind to any one regarding the relation without her consent or against her will. Looking to her stay for a number of days, it cannot be inferred that any criminal act was committed against the prosecutrix without her consent or against her will. Therefore, finding arrived at by the trial Court is not sustainable.

8. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellants are hereby set aside and they are acquitted of the charges under Sections 363, 366 and 376 (2)(g) IPC. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months from today in terms of Section 437A of the Code of Criminal Procedure, 1973.

Sd/-
(Ram Prasanna Sharma)
JUDGE