

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 871 of 1999**

- Shrilal, S/o- Ahetram Yadav, Aged about 27 years, R/o- Newati Behra Chouki Belgehna, P.S.- Kota, District- Bilaspur (M.P.) (Now C.G.) ----- **Appellant**

**Versus**

- State of Madhya Pradesh (Now C.G.), through- Police Station- Kota, District- Bilasur (M.P.) (Now C.G.) ----- **Respondent**

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For Appellant : Shri Manoj Kumar Jaiswal, Advocate.

For State/Respondent : Shri Ishwar Jaiswal, Panel Lawyer.

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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****19/11/2019**

1. This appeal is preferred against the judgment dated 13<sup>th</sup> March, 1999 passed by Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Bilaspur (M.P.) (Now C.G.) in Special Criminal Case No. 37/98 wherein the said court convicted the appellant for commission of offence under Section 376(1) of IPC, 1860 and sentenced him to undergo R.I. for seven years and fine of Rs. 500/- with default stipulations.
2. In the present case, prosecutrix is PW-1, her birth certificate was not produced and proved before the trial Court, and school certificate regarding age is also not produced before the trial Court and there is no record of her age.
3. To ascertain the age of prosecutrix, Dr. S. Chatarjee (PW-8) is examined who deposed before the trial Court that one x-ray report was produced on the basis of which he found that the age

of prosecutrix is between 16 to 18, but in cross- examination stated there may be variation of two years in the age of the prosecutrix, therefore, from the evidence of this witness also age of the prosecutrix may be 20 years. It is not proved that prosecutrix was minor on the date of incident i.e. on 5<sup>th</sup> June, 1997.

4. The other question for consideration of this Court is whether the appellant committed sexual intercourse with her without her consent and against her will. The prosecutrix is well known to the appellant. As per version of this witness (Para-2), she visited with appellant in many places like Bilaspur, Ratanpur and Kota on assurance that he will provide her service in Aaganbadi. The prosecutrix deposed that she made physical relation with appellant on assurance that appellant will marry with her and as per version of this witness, she maintained physical relation with the appellant more than 20 times. Looking to her visit repeatedly with appellant and further looking to the fact that she has repeatedly made physical relation with the appellant, it is difficult to hold that relation maintained by her with the appellant was without her consent and against her will. In case of sexual assault, the statement of prosecutrix must be of sterling quality because normally she is the sole sufferer of the incident. In the present case, version of the prosecutrix is not of sterling quality, but from her statement it is clear that she visited many times with the appellant and made physical relation many times. The trial Court did not assess this aspect of the matter, therefore, finding of the trial Court is not sustainable.

5. Accordingly, appeal is allowed. Conviction and sentence imposed on the appellant is hereby set aside. The appellant is acquitted from charge under Section 376(1) of IPC, 1860. 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