

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 647 of 2009****Reserved on : 01.03.2019****Delivered on : 29.03.2019**

Rinku @ Rakesh Rajput, S/o Narendra Singh Rajput, aged about 19 years, R/o Balaji Nagar, on the Rental House of Ramawadh Sharma, Khursipar, Police Station – Supela, District – Durg (C.G.)

Present R/o Near the Public Toilet of Municipal Corporation, Ramnagar, Gudhiyari, Raipur, District- Raipur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through the District Magistrate, Raipur, District- Raipur (C.G.)

---- Respondent

 For Appellant : Ms. Mandavi Bhardwaj, Advocate.
 For State/respondent : Mr. Raghvendra Verma, GA.

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

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 09.07.2009 passed by 14th Additional Sessions Judge (FTC), Raipur, District- Raipur (C.G.) in Session Trial No. 216/2008, wherein the said court convicted the appellant for commission of offence under Sections 363, 366 & 376(1) of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 500/-, R.I. for 5 years and fine of Rs. 500/- & R.I. for 7 years and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-5 who is minor. As per version of the prosecution, on the date of incident i.e. on 21.09.2008 at about 1:30 p.m., the appellant taken away the

prosecutrix without permission of her parents and committed rape on her. The matter was reported, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The trial court committed error in holding that age of the prosecutrix is below 16 years on the basis of mark-sheet of primary school which shows that date of birth of the prosecutrix is 09.07.1994. Version of the prosecutrix is not supported by other prosecution witnesses, therefore, finding of the trial court is not sustainable.

(ii) The prosecutrix was consenting party and finding arrived at by the trial court is not substantiated by evidence, therefore, conviction of the appellant is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. In the present case, school certificate is produced by mother of the prosecutrix namely Smt. Sasha Pandey (PW-1) and as per version of this witness, age of the prosecutrix is 14 years which is supported by evidence of Snehlata Shrivastava (PW-4). From statement of Smt. Sasha Pandey (PW-1), it is established that she and her husband admitted the

prosecutrix into school and date of birth of the prosecutrix is 09.07.1994. Version of Smt. Sasha Pandey (PW-1) is unrebutted, therefore, it is established that at the time of incident i.e. on 21.09.2008, the prosecutrix was about 14 years old and was minor and she was in custody of her lawful guardianship.

6. The prosecutrix deposed before the trial court that the appellant forcibly removed her underwear and committed physical intercourse with her. Version of prosecutrix is supported by version of Smt. Sasha Pandey (PW-1) and Bhumika Pandey (PW-2). As the prosecutrix was minor on the date of incident, she was not competent to give consent for maintaining physical relation, therefore, act of the appellant falls within offence of rape as defined under Section 375 of IPC. From evidence of the prosecutrix, it is established that the appellant seduced her to commit illegal intercourse.
7. Looking to the entire evidence, it is established that it is a case of kidnapping and rape and there is no reason to say that the appellant has been roped with false charge. There is also no reason to disbelieve version of the prosecution witnesses.
8. The trial court has rightly evaluated the entire evidence and this Court has no reason to record contrary finding. Act of the appellant falls within mischief under Sections 363, 366 & 376(1) of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence

9. The trial court awarded jail sentence of 7 years for commission of offence under Section 376 (1) of IPC which is minimum prescribed sentence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
10. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge