

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 198 of 2002**

Jhadu Ram, Aged about- 29 years. S/o- Amol Das Satnami,
Occupation- Labourer, R/o- Village Sonasilli, Police Station –
Pithora, Tehsil & District- Mahasamund, (C.G.)

---- Appellant**Versus**

The State of Chhattisgarh

---- Respondent

For Appellant : Mr. C.R. Sahu, Advocate
For State/respondent : Mrs. Shubha Shriwastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****13.08.2019**

1. This appeal is preferred against judgment dated 26.12.2001 passed by 1st Additional Sessions Judge, Mahasamund, District- Mahasamund (C.G.) in Sessions Trial No. 268/98 wherein the said court convicted the appellant for commission of offence under Sections 363, 366 and 376(i) of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 7 years and fine of Rs. 500/-, R.I. for 10 years and fine of Rs. 500/- & R.I. for 10 years and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-1 and as per version of prosecution, she was minor on the date of incident i.e. on 24th March, 1998 and was in lawful guardianship of her parents. Appellant took her to seduce her for illicit intercourse and

committed rape on her between 24th March, 1998 to 05th April, 1998. The matter was reported and investigated and after completion of trial the appellant was convicted and sentenced as mentioned above.

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

(i) It is not proved that prosecutrix is below 18 years of age on the date of incident because school certificate is not proved for ascertaining the age of the prosecutrix.

(ii) The radiology examination has not established the exact age of the prosecutrix, therefore, she was not minor on the date of incident.

(iii) As per evidence of prosecutrix she visited with the appellant in so many places but did not complain to anyone regarding illegal act on the part of appellant.

(iv) The evidence of prosecutrix suggesting her to be a consenting party and therefore, no case is made out against present appellant. The trial Court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial Court may be set aside.

4. On the other hand learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. The first question for consideration of this Court is whether the prosecutrix was minor on the date of incident i.e. 24th March,

1998. Mr. K.R. Vishwakarma(PW-2) is in-charge Head Master of middle school Barondabazar, who produced school certificate of the prosecutrix, in which date of birth of the prosecutrix is mentioned as 10th September, 1984. In cross-examination this witness has deposed that the entries regarding date of birth are not made by him. It is also not clear from the evidence of this witness as to who admitted the prosecutrix in the school and whether the date of birth is mentioned as per birth certificate or on imagination. Smt. Alka Pardal (PW-11) Medical Officer deposed on the basis of radiology examination but in her cross examination she deposed that there is possibility of variation in the age on either side for 3 years. This witness is also not certain about the exact age of the prosecutrix. She has clearly stated in her cross-examination that whatever she deposed before the Court is based on imagination, therefore, version of this witness is also not establishing age of the prosecutrix.

6. No birth certificate was produced before the trial Court and proved by parents or person who recorded it. In absence of birth certificate and in absence of satisfactory evidence regarding age of the prosecutrix it is not proved that prosecutrix was below 18 years of age and she was minor on the date of incident.
7. Case of the prosecution is based on statement of prosecutrix (PW-1) and the other witnesses are witnesses of investigation after registration of FIR. Mangal Das (PW-4) who is father of

the prosecutrix is also not able to say about date of birth of the prosecutrix or year of birth of the prosecutrix. His statement is also based on imagination therefore, trial Court is not right in holding that prosecutrix was minor.

8. Other question for consideration of this Court is whether, act of the appellant falls within mischief of under Sections 363, 366 and 376(i) of the IPC. The prosecutrix and the appellant are known to each-other and as per the version of the prosecutrix before the incident the appellant told her that he will take her to house of his sister, brother-in-law, and niece (Para-24).
9. From the evidence of prosecutrix it is clear that both the appellant and the prosecutrix first moved on foot and thereafter moved by bicycle (para-5). First she visited village Harnadadar and stayed with the appellant for one day, again she visited with the appellant to village Harnadadar and stayed there with the appellant. Thereafter she visited to village Devri with the appellant and stayed there for two days. As per version of this witnesses appellant introduced her as his sister-in-law but she did not object to that statement of appellant (para-33). She further deposed that she stayed in the house of maternal uncle of the appellant where maternal aunt of the appellant was in the same house. She further deposed that she slept with the appellant in one room at village Harnadadar. She further deposed that at one point of time she informed brother-in-law of the appellant that she is willingly came with the appellant (para-50-52).

10. Looking to the entire statements of the prosecutrix and her time of staying with the appellant, it cannot be inferred that appellant did anything against her will and without her consent. On the contrary, she visited many places with the appellant, stayed with him, slept with him at overnight but did not complain to anyone that any illegal act was committed by the appellant against her, which shows that she may be consenting party.
11. It is settled law that there is a long mental distance may be true or must be true. The appellant can be convicted only when the case comes within category of must be true and it is also settled law that greater the offence, stricter the proof.
12. Looking to the entire evidence and in the facts and circumstances of the case, it is difficult to hold that the appellant seduced the prosecutrix for illicit intercourse and committed rape on her.
13. Finding arrived at by the trial Court is not sustainable. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is hereby set aside and the appellant is acquitted of all the charges framed against him.

Sd/-
(Ram Prasanna Sharma)
Judge