

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-02-2019

Delivered on 15-3-2019

Criminal Appeal No. 112 of 2009

- Rajesh Kumar Tandon s/o. Shri Raja Ram Tandan aged about 28 years, r/o. Villabge sonpairi, Police Mandir Hasaud, Dist. Raipur (CG).

---- Appellant**Versus**

The State of Chhattisgarh Through Police Station Mandir Hasaud, Raipur (CG).

---- Respondent

For the appellant : Mr. T.K. Tiwari, Advocate
appears as Amicus Curiae

For the respondent/State : Mrs. Shubha Shrivastava, PL

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

1. This appeal is preferred against the judgment dated 31-01-2009 passed by the 10th Additional Sessions Judge, Raipur, (CG) in Session Trial No. 134 of 2008 wherein the said Court has convicted the appellant for the commission of offence under Section 363 of IPC and sentenced him to undergo RI for three years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/5. As per version of the prosecution she was found missing by her parents that is why a

missing report was lodged on 3-5-2008. During investigation it was found that the appellant seduced her and took her from lawful guardianship of her parents and committed rape on her. The matter was investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The date of birth of the prosecutrix is tried to be proved by evidence of school register, but the same is not proved according to law.
- ii) Parents of the prosecutrix failed to prove the age of the prosecutrix and their other children. They have deposed that the elder sister of prosecutrix is about 21 years of age. There is difference of 1 to 1 ½ years between the children. Therefore, it has not been proved that prosecutrix was below 18 years on the date of incident.
- lii) The trial Court acquitted the appellant for rest of the charges and looking to the evidence charge under Section 363 of the IPC is not established.

4. On the other hand, learned counsel for the respondent 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 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. The only point for consideration of this court is whether the victim was 14 years of age on the date of incident i.e., 1-5-2008. Dhirendra Kumar Sahu (PW/4) is the person who brought the school register before the trial Court. He deposed before the trial Court that prosecutrix was admitted in school on 1-6-2007. Her date of birth was recorded from the certificate of Class V. As per version of this witness, he has not recorded the date of birth and it is not clear at whose instance the date of birth was recoded. PW/9 Ramchand Yadav is father of the victim and PW/10 Smt. Kunti Yadav is mother of the victim. They have made general statement that age of the prosecutrix is about 15 years, but no one deposed as to who really admitted the prosecutrix in school, therefore, entry into school register is not proved and age cannot be determined on the basis of school register.

7. Oral evidence of the prosecution witnesses is not conclusive in nature. They made general statement regarding age of the

prosecutrix and they were unable to tell the date of birth of the prosecutrix, therefore, it cannot be held that on the date of incident i.e., 1-5-2008 prosecutrix was 18 years of age. When prosecutrix was not below 18 years of age, she cannot be taken from lawful guardianship. Charge under Section 363 of IPC is not established.

8. Accordingly, the appeal is allowed. Conviction and sentence of the trial Court is hereby set aside. The appellant is acquitted of the charge framed against him. 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