

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.247 of 2009**

Chatturam Aged about 22 years, S/o. Sukhram R/o. Village  
Siladehi, Thana Bamhnidih, Distt. Janjgir Champa (CG)

---- Appellant

**Versus**

State Of Chhattisgarh Through P.S. Bamhnidih Distt. Janjgir  
Champa (CG)

---- Respondent

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For the appellant : Shri Parag Kotecha, Advocate

For the State/respondent : Shri Afroj Khan, Panel Lawyer  
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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****13.3.2019.**

1. The appeal is directed against judgment dated 28.02.2009 passed by Second Additional Sessions Judge (FTC), Janjgir-Champa (CG) in Session Trial No.27/2009 wherein the said Court convicted the appellant for commission of offence under Sections 363, 366 & 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of 500/-; RI for three years and to pay fine of Rs.500/-; RI for seven years and to pay fine of Rs.500/- with default stipulation.

2. In the present case prosecutrix is PW-1. As per the version of the prosecution, the prosecutrix was minor on 15.01.2008 and she eloped with the appellant on his assurance of marriage. She has been taken away from the lawful guardianship of her parents. The appellant committed forcible intercourse with the prosecutrix and as she was minor she was not competent to give consent. The matter

was reported and the appellant was charge sheeted and convicted as mentioned above.

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

(i) It is not proved that the prosecutrix was minor on the date of incident, i.e. 15.01.2008.

(ii) As per the evidence of the prosecutrix, she stayed with the appellant in various places and they performed marriage during the said period, therefore, it cannot be said that any act is done against her will or her consent.

(iii) The trial Court has not evaluated the evidence in its right perspective and the same is liable to be set aside.

**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 while invoking the jurisdiction of the appeal.

**5.** I have heard learned counsel for the parties and perused the record of the Court below.

**6.** Ratan Bai (PW-3) is mother of the prosecutrix. She did not depose before the trial Court that she admitted the prosecutrix in any school and recorded her date of birth. Rohit Kumar (PW-4) is father of the prosecutrix. As per the version of this witness, it is not clear whether he admitted the prosecutrix in the school. This witness is not able to state the date of birth of the prosecutrix. Head Master GR Tiwari (PW-5) though submitted admission register of Govt. Middle School, Silodehi, but he is not able to say as to how the date of birth of the prosecutrix was written in the school register and what was the basis for recording her date of birth in the school register.

He is also unable to say as to who recorded her date of birth in the school register. This witness has not recorded the date of birth and the person who recorded the date of birth is not examined, therefore, date of birth of the prosecutrix in the school register is not proved by legal evidence. Dr. Geroge M Khakha (PW-8) who is a Radiologist, examined the prosecutrix and opined that her age is between 16-18 years. He deposed in his cross-examination that there may be variation of two years on either side in the age determined by radiological examination. From the evidence of this witness, it is clear that the prosecutrix may be of 20 years on the date of examination.

7. On overall assessment of the evidence, it is not established that the prosecutrix was below 18 years on the date of incident. When minority of the prosecutrix is not established, it cannot be said that she had been taken from lawful guardianship, therefore, charge under Section 363 IPC is not established.

8. Proscutrix (PW-1) deposed that she herself reached to village Bira on the date of incident and thereafter had gone to village Champa and then Bilaspur by train. She further deposed that the appellant was not willing to have her company but she accompanied herself to the appellant. She further deposed that after alighting from the train at Raipur both visited Banjari Temple where the appellant applied vermilion on her forehead and also he tied mangalsutra. She further deposed that after this they were staying in rented house as husband and wife and they maintained physical relation as husband and wife. From the entire evidence of the prosecutrix, it is evident that nothing is done against her will and without her consent. Looking to the entire evidence, there is nothing on record to

establish that the prosecutrix has been seduced for illicit intercourse or subjected to sexual intercourse against her will and without her consent. Therefore, evidence for commission of offence under Sections 366 & 376(1) IPC is lacking. The trial Court recorded its finding on the basis that the prosecutrix was minor on the date of incident but the same is not sustainable looking to the entire evidence.

9. Accordingly, appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. He is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

**Sd/-**

**(Ram Prasanna Sharma)**  
**JUDGE**