

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09-12-2019
 Delivered on 17-12-2019

CRA No. 674 of 2019

- Mahesh Kumar Bhuinya S/o Vikram Bhiunya, Aged About 18 Years R/o Village - Matgadi, Thana - Bhandariya, District Gadwa (Jharkhand).

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Rajpur, District Balrampur Ramanujganj Chhattisgarh.,

---- Respondent

For Appellant : Mr. Sanjay Patel, Advocate

For respondent/State : Mrs. Smita Jha, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 7-3-2019 passed by the Additional Sessions Judge, Ramanujganj, CG in CIS – Special Session Trial (POCSO) No. 24 of 2015 wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.200/-, RI for

seven years and fine of Rs.200/- and RI for ten years and fine of Rs.500/- respectively with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/2. As per version of prosecution, on 18-2-2015 at about 10.00 a.m., appellant enticed prosecutrix on the pretext of marriage and forcefully committed sexual intercourse with her. FIR was lodged on 18-2-2015. The matter was investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) Prosecutrix has not supported the version of prosecution and she visited with the appellant many places without any complaint, therefore, charge against the appellant is not established.
- ii) Age of the prosecutrix is not proved to be below 18 years of the age on the date of incident, therefore, she was not minor and charge under Section 363 of IPC from taking the prosecutrix from lawful guardianship of her parents is not established.
- iii) The trial court has not evaluated the

evidence in its true perspective, therefore, finding of the trial court 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 marshalling 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. PW/1 Balmukund is father of the prosecutrix. He did not depose regarding date of birth of prosecutrix. Though he stated that her age is 15 years, but he is not able to tell the date of birth of the prosecutrix. PW/4 Devmati, is mother of the prosecutrix and she is also not able to tell the date of birth of the prosecutrix. PW/6 Shyamsunder Jangde, Head Master, Middle School, Narsingpur, District Bilaspur. He brought the school register in which date of birth of prosecutrix was mentioned as 15-4-2000 but the same is recorded by some other person. This witness is not able to tell on what basis date of birth of the prosecutrix is recorded. He deposed that her date of birth is recorded for admission in Class VI. It is not established that when the prosecutrix was admitted in Class -1 standard. The author of date of birth of the prosecutrix is not examined before the trial court

and the person who admitted the prosecutrix in Class-1 standard is also not examined before the trial court. No birth certificate of prosecutrix was examined and no radiological examination was done in the present case, therefore, there is no oral and documentary evidence which is proved and according to that prosecutrix was minor. In absence of evidence, prosecutrix is not proved to be below 18 years of the age on the date of incident i.e., 18-2-2015. When she was not minor then taking her from lawful guardianship of her parents has also not been established. Accordingly, charge under Section 363 of IPC is not proved against the appellant.

7. Prosecutrix (PW/2) deposed before the trial court that the appellant took her to the State of Jharkhand at village Matouli and thereafter she has been taken to some other village where appellant maintained physical relation with her. She admitted (para 7) that she did not resist the appellant and she did not state to anyone that the appellant had taken her forcefully.

8. Looking to the conduct of the prosecutrix in not informing the incident to others and not resisting the appellant, it cannot be inferred that whatever is committed by the appellant is without her consent or against her will, therefore, it cannot be said that she has been seduced by the appellant and rape was committed on her. Charge leveled against the appellant is not established. On an over-all assessment, it is difficult to hold that the material

available on record is sufficient to establish charge under Sections 363, 366 of IPC and Section 6 of the Act, 2012.

9. Accordingly, the appeal is allowed. Conviction and sentence awarded to the appellant is hereby set aside. He is acquitted of the charge under Sections 363, 366 of the IPC and 6 of the Act, 2012. 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