

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.243 of 2005**

Umesh Kumar Jayaswal, S/o. Kamta Prasad Jayaswal, age 30 years, Occupation Jan Swastha Rakshak R/o. Father's Kuccha House, Village Dogro PS Chalgali, Distt. Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh through SHO, Police Station Chalgali, Distt. Surguja (CG)

---- Respondent

 For the appellant : Shri Nishi Kant Sinha, Advocate
 For the Respondent/State: Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****03.12.2019**

1. The appeal is preferred against judgment dated 11.3.2005 passed by Additional Sessions Judge, Link Court Ramanujganj (Surguja) (CG) in Session Trial No.40/2004 wherein the said Court convicted the appellant for the commission of offence under Section 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.25000/- with default stipulation.

2. In the present case, prosecutrix is PW-1. As per the evidence of Incharge Principal BS Ekka (PW-7), date of birth of the prosecutrix is 04.5.1985. Report was lodged on 13.7.2003. On that day, the prosecutrix was aged about 18 years and two months. It is alleged that the offence was committed since ten months of the lodging of the report. Even before ten months of

the lodging of the report, the prosecutrix was more than 17 years. The prosecutrix deposed before the trial Court that she made physical relation with the appellant for number of times. She admitted (para 7) that she made physical relation with the appellant on her consent only. She further deposed (para 10) that when she made physical relation with the appellant for the first time, it was with her consent only. She further deposed (para 17) that if the appellant would have married her, she would not have lodged the report. It means, physical relation was maintained with her consent but report was lodged on account of not marrying her by the appellant.

3. Arvind Giri (PW-3), father of the prosecutrix, also deposed (para 12) that if the appellant would have married his daughter, they would not have lodged the report.

4. In the present case, incident took place in the years 2002 and 2003. At that time as per Section 375(6), sexual intercourse with the consent of the girl of more than 16 years will not fall under the definition of rape. At the time of the report, the prosecutrix was more than 18 years. Looking to the factual matrix and legal aspects of the matter, it cannot be said that rape is committed by the appellant against the prosecutrix. Therefore, finding arrived at by the trial Court is not sustainable.

5. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellant is hereby set aside and he is acquitted of the charges under Sections 376(1) IPC. The appellant 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

Bini