

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26-11-2019
Delivered on 17-12-2019

CRA No. 656 of 2013

- Abhay @ Montu S/o Dinesh Sonwani Aged About 24 Years
R/o Village Mudhipar , Thana Pithora, Distt. Mahasamund
Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh S/o Through - Sho., P.S. Baghbahra ,
Distt. Mahasamund, Chhattisgarh

---- Respondent

For Appellant	:	Mr. Abhay Kaiwartya, Advocate
For respondent/State	:	Mr. Aman Kesharwani, 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 8-7-2013 passed by the Additional Sessions Judge (FTC), Mahasamund, CG in Sessions Trial No. 14 of 2012 wherein the said Court has convicted the appellant for commission of offence under Sections 363 & 366 of the IPC and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.500/- on each count, with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, prosecutrix was minor on the date of incident i.e., 26-10-2011 and she was in custody of her parents. The appellant took her from lawful guardianship of her parents on 16-10-2011 from village Salhebhata and committed sexual intercourse with her without her consent and against her will. The matter was reported and 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) As per version of DW/3 Dr. Rajesh Ruprel, age of the prosecutrix is more than 19 years as per x-ray report (Ex.D/14), therefore, she was not minor on the date of incident.
- ii) The trial court has failed to appreciate that prosecutrix is a consenting party and she was married to appellant in Arya Samaj.
- 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. The first question for consideration of this court is whether the prosecutrix was below the age of 18 years on the date of incident i.e., 26-10-2011. Smt. Rambai (PW/2) is mother of the prosecutrix. She did not state regarding date of birth of the prosecutrix. PW/4 Nandkumar is father of the prosecutrix. He also did not state regarding date of birth of the prosecutrix. Balaram Markendeya (PW/5), Shiksha Karmi, Grade-II, deposed before the trial court that he issued certificate regarding date of birth of the prosecutrix on the basis of entry register of school i.e., Middle School, Salehbhata and as per record, her date of birth is 19-8-1994. This witness has not deposed that entry has been made by him. No one was examined who admitted the prosecutrix in the school and author of the register is also not examined, therefore, in absence of statement of the author and person who admitted the prosecutrix in school, entry in school register is not proved. From the evidence adduced by the prosecution, it is not established that prosecutrix was below 18 years of the age on the date of incident.

7. Prosecutrix (PW/1) deposed before the trial court that the appellant took her to village Mudipara and kept her in his village

Mudipara and thereafter they moved to village Dabha and again they moved to Raipur and she stayed with the appellant . She admitted in her cross examination that the appellant is having a bus and bus regularly halted in the night in their village and appellant used to take food in her house. She further admitted (para 4) that she married with the appellant in Arya Samaj temple, Raipur. Though she deposed that she was married forcefully but looking to solemnization of marriage with the appellant and further looking to the fact that she stayed with the appellant in various places it is difficult to hold that the appellant seduced her to marry and maintained physical relation with her without her consent and against her will. In case of sexual assault, statement of the prosecutrix must be of sterling quality and if her version inspires confidence then no corroboration is necessary. In the present case when minority of the prosecutrix is not proved, she married with the appellant and stayed with the appellant, it is difficult to hold that she has been seduced by the appellant for marry or illicit intercourse. Again it is difficult to hold that she has been taken from lawful guardianship of her parents. On an over-all assessment, it is difficult to hold that the material available on record is sufficient to establish charge under Sections 363 and 366 of IPC.

8. 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 and 366 of the IPC. 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