

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.724 of 1995**

Videshi Ram S/o. Shri Lakhan Yadav, aged 23 years, By
 occupation Farmer R/o. Village Katangi, Police Station
 Gandai, Distt. Rajnandgaon (MP) (Now CG)

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh) through
 Officer of the Police Station House Gandai Distt.
 Rajnandgaon

---- Respondents

 For the Appellant : Ku. Preeti Jha, Advocate
 For the Respondent/State: Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****24.02.2020**

1. Shri RN Jha, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Ku. Preeti Jha, Advocate, who is present in the Court, has been appointed as Amicus Curiae to argue the case on behalf of the appellant.

2. The appeal is preferred against judgment dated 05.5.1995 passed by Additional Sessions Judge, Khairagarh (MP) (Now CG) in Session Trial No.182/1993 wherein the said Court convicted

the appellant for the commission of offence under Section 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 04 years and to pay fine of Rs.500/- with default stipulation.

3. In the present case prosecutrix is PW-3. As per the version of the prosecutrix, the appellant made physical relationship with her out of her consent and she conceived and her pregnancy was about seven months. She deposed before the trial Court that the appellant refused to maintain her as his wife that is why she lodged a report. The trial Court recorded finding that physical relation is maintained by the appellant with the prosecutrix out of consent and this Court has no reason to take a contrary view.

4. Bhalesh Ram (PW-4) is father of the prosecutrix. He did not depose date of birth of the prosecutrix before the trial Court. Though one Sobaran Singh (PW-7) examined before the trial court on the basis of one birth register but from his statement it is not clear as to who recorded the date of birth of the prosecutrix in the school register and whether it was recorded by the father or mother of the prosecutrix. Mother of the prosecutrix was not examined before the trial Court and father of the prosecutrix did not know the date of birth of the prosecutrix. It is also not clear as to who made the entry in the said register. It is not proved that the

prosecutrix was below 18 years of age on the date of incident i.e. in the month of February 1993. Maintaining relation with a major girl has not been made a punishable offence. Therefore, finding arrived at by the trial Court is not sustainable.

5. Accordingly, the appeal is allowed. Conviction of the appellant for the offence under Section 376 of the IPC is hereby set aside. He is acquitted of the said charges. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months from today as per the terms of Section 437A of the CrPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE