

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 204 of 2009

Ajay Kumar Gupta, Son of Mansai Gupta, aged about 21 years,
Occupation-Agriculturist, Resident of Village-Chapda, Police Station-
Odgi, District:Surguja (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Jhilmili, District : Surguja
(C.G.)

---- Respondent

For Appellant	: Ku. Preeti Jha, Advocate as <i>Amicus Curiae</i> .
For Respondent/State	: Shri Afroz Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

31.01.2020

1. When the case is called for hearing, none appears on behalf of the appellant. Ku. Preeti Jha, Advocate present in the Court is appointed as *Amicus Curiae* to argue the matter on behalf of the appellant in this appeal.
2. This appeal is preferred against the judgment dated 28.02.2009 passed by the 1st Additional Sessions Judge, Surajpur in Sessions Trial No.81/2008, wherein the said Court has convicted the Appellant for commission of offence under Sections 363 and 366 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment of two years and fine of Rs.500/- and rigorous imprisonment for three years and fine of Rs. 1,000/- with default stipulations.

3. In the present case, the prosecutrix is (PW-4). As per the version of the prosecution, on 17.12.2007, the appellant met the prosecutrix and took her to village Shiv Pratap Nagar, where he committed sexual intercourse with her. The matter was reported and investigated, the appellant was charge-sheeted and convicted as mentioned above.
4. Learned counsel for the Appellant submits as under :
 - (i) Prosecutrix is a consenting party that is why the Trial Court acquitted the appellant for charge under Section 376(1) of the IPC;
 - (ii) Age of the prosecutrix is not proved to be below the 18 years, therefore, charge levelled against the appellant is not established;
 - (iii) The Trial Court has not evaluated the evidence properly, therefore, finding of the Trial Court is liable to be set aside.
5. On the other hand, the learned counsel for the State supporting the impugned judgment, submits that finding of the Trial Court is well reasoned which is not liable to be interfered with while invoking jurisdiction of the appeal.
6. I have heard counsel for the parties and perused the records of the Court below in which judgment has been passed.
7. The Trial Court after evaluating the evidence of the prosecutrix and other witnesses recorded finding that prosecutrix visited with the appellant at many places and hence she did not inform to anyone regarding the act of the appellant which shows consent on the part of

prosecutrix. The Trial Court recorded finding regarding age of the prosecutrix on the basis of evidence of her father and mother, namely, Ram Sagar (PW-5) and Smt. Kalawati (PW-6) respectively. From the statement of Ram Sagar (PW-5) it is established that prosecutrix was born in the month of March, 1996. His version is supported by version of Smt. Kalawati (PW-6). On radiological examination, her age was found to be below 18 years. Taking into consideration, the evidence of parents and radiological examination, the Trial Court recorded finding that prosecutrix was minor on the date of incident and on that basis the Trial Court recorded conviction under Section 363 and 366 of the IPC.

8. After reassessing the evidence, this Court has no reason to take a contrary view what is recorded by the trial court. Accordingly, conviction of the appellant under said offence is hereby affirmed. The appellant suffered jail term of about 1 year and 4 months during trial and after conviction. Taking into consideration that prosecutrix was consenting party in eloping with the appellant, jail sentence imposed by the Trial Court is reduced to the period already undergone by him. However, the fine amount imposed by the trial Court shall remain intact.
9. With the aforesaid modification, the appeal is partly allowed.

Sd/-
(**Ram Prasanna Sharma**)
JUDGE