

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 554 of 2011

1. Budhram, S/o Baran Bhunjiya, aged about 21 years, R/o Village- Jalkumbhi, Thana- Magarlod, District- Dhamtari (C.G.)
 2. Siyaram, S/o Sonauram, aged about 45 years, R/o Village- Barethin Konha, Thana- Gariyaband, District- Raipur (C.G.) (Dead)
 3. Lalji Dhruv, S/o Late Jhadiram Dhruv, aged about 45 years, R/o Village- Barethin Konha, Thana- Gariyaband, District- Raipur (C.G.)
 4. Khemlal Bhunjiya, S/o Amru Bhunjiya, aged about 26 years, R/o Village- Jalkumbhi, Thana- Magarlod, District- Dhamtari (C.G.)
- Appellants**

Versus

State of Chhattisgarh, Through- Police Station Magarlod, District- Dhamtari (C.G.)

---- Respondent

For Appellants : Mr. Suresh Tandon, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

24/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 28.02.2011 passed by Additional Sessions Judge (F.T.C.), Dhamtari, District- Dhamtari (C.G.) in Session Trial No. 74/2010, wherein the said court convicted all the appellants for commission of offence under Sections 363 & 366 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 250/- each on each count with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on the date of incident i.e. on 15.06.2010 at about 11:00 a.m., the prosecutrix was aged about 17 years

and she was kidnapped by the appellants and appellant No.

1- Budhram committed rape on her. The matter was reported, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned as above.

3. Learned counsel for the appellants submits as under:-

(i) There is no evidence to establish age of the prosecutrix. The trial court recorded finding that the prosecutrix was consenting party in moving with appellant No. 1- Budhram.

(ii) There is no evidence that any of the appellant seduced the prosecutrix for illicit intercourse.

(iii) The trial court has already acquitted for other offences, but recorded finding of minority without any substance, therefore, the finding arrived at by the trial court is liable to be set aside.

4. I have heard learned counsel for the parties and perused the records.

5. From judgment of the trial court, it is clearly established that the prosecutrix was consenting party in moving with appellant No. 1- Budhram. The trial court also recorded finding that the prosecutrix was consenting party in maintaining physical relation with appellant No. 1- Budhram. The only question for consideration before this Court is whether the prosecutrix was minor at the time of incident i.e. on 15.06.2010. Kanwal Singh Bhunjiya (PW-2) is father of the prosecutrix. This witness is not able to tell date of birth of the prosecutrix (Para 9). Sukhmati Bhunjiya (PW-3) is mother of the prosecutrix, she is

also not able to tell date of birth of the prosecutrix and age of the prosecutrix. No one examined from the school to establish date of birth of the prosecutrix. No birth register was produced before the trial court to ascertain age of the prosecutrix. No radiological examination was conducted to ascertain age of the prosecutrix.

6. Taking into consideration the entire evidence, it is not established that the prosecutrix was minor at the time of incident. The trial court has already recorded finding that the prosecutrix is consenting party in maintaining physical relation with appellant No. 1- Budhram, therefore, it cannot be said that any of the appellant seduced the prosecutrix to maintain physical relation with said appellant No. 1- Budhram. The charge under Sections 363 & 366 of IPC, 1860 is not established, therefore, the finding arrived at by the trial court is not sustainable.
7. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellants are acquitted of the charge under Sections 363 & 366 of IPC, 1860. The appellants are reported to be on bail. Their bail bonds shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge