

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 932 of 2016**

Aditya Pandey S/o Shri Shyam Pandey, aged about 22 years R/o Village: Baniya Kachhar Tola, Vikram Tola, Post Sasabhusa, Police Station Kuchoykot, District Gopalganj (Bihar)

---- Appellant**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Kotra Road, Raigarh, District Raigarh (C.G.).

---- Respondent

For Appellant	:	Mr. Amit Singh, Advocate
For Respondent	:	Ms. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**24/01/2020**

1. This appeal has been preferred against the judgment dated 27/06/2016 passed in Special Case No. 76/2015 by the Additional Sessions Judge, (Fast Track Court), Raigarh, District Raigarh whereby the Appellant has been convicted under Sections 363 & 366 of the IPC and Section 9 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo RI for 3 years with fine of Rs. 200/-, RI for 7 years with fine of Rs. 500/- and RI for 4 years with fine of Rs. 200, respectively, with default stipulations.
2. Facts of the case are that on 18/06/2013, the Prosecutrix (PW5) leaved her house saying that she is going to her maternal uncle and went to Kusmpura and thereafter she was missing. The Prosecutrix

used to talk with a boy on her mobile phone. On suspicious, his father lodged a missing report. On 29/07/2015, the Prosecutrix was recovered from the possession of the Appellant. Her statement under Section 161 of the Cr.P.C was recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 17 prosecution witnesses have been examined. No defence witness has been examined. Statements of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the Prosecutrix as well as her father, both have stated that at the time of incident, the Prosecutrix was aged about 18 years and the Prosecutrix herself had left her house, therefore, it is established that she was the consenting party. He further submits that the Prosecutrix and her father have not supported the case of the Prosecution on other point. He further submits that the Applicant has already undergone about 4 ½ years, he has no criminal antecedent and he is facing the lis since 2013, therefore, the sentence awarded to him may be reduced to the period already undergone by him.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the

trial Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 7 years, the Appellant has undergone 4 ½ years, he is facing the *lis* since 2013 and there is no criminal antecedent against them, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned sections is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
9. It is reported that the Appellants/accused are in jail. He be released forthwith, if not required in any other case.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge