

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1089 of 2013**

- The State Of Chhattisgarh Through The District Magistrate Bilaspur, Chhattisgarh

---- Applicant

Versus

- Loman Prasad Rathore S/o Mohan Lal Aged About 21 Years R/o Village Bandhamuda, P.S. Gourela, Distt.-Bilaspur, Chhattisgarh

---- Respondent

For Applicant-State	:-	Shri Avinash Choubey, PL
For Respondent	:-	Shri Rakesh Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Order On Board

By**Prashant Kumar Mishra, J.****10/02/2020**

1. On due consideration delay of 50 days in filing of the Cr.M.P. is condoned. Accordingly, I.A. No.01, for condonation of delay is allowed.
2. The trial Court has acquitted the accused of the charges under Sections 363, 366, 376 of the I.P.C.
3. Accused committed forcible sexual intercourse with the

prosecutrix for a continuous period of two months prior to the date of lodging FIR i.e., 10.05.2012. The prosecutrix became pregnant and thereafter informed her parents and Panchayat meeting was convened. Parents of the accused were willing to accept the prosecutrix in their family but in the absence of accused their marriage was not materialized. Thereafter the prosecutrix aborted the fetus and the FIR was lodged.

4. Prosecutrix examined as PW-9 would state that after the first incident occurred in the forest, the accused used to call her for having sexual relation at any point of time and she used to accept the relationship, however, he refused to marry her after she became pregnant. She states in her examination-in-chief that she wanted to marry the accused only because she became pregnant otherwise she would have not married the accused. Her father examined as PW-7, admits that his daughter was in love with the accused.
5. Date of birth of the prosecutrix is stated to be 22.01.1997 as per the Dakhil Khareej Register and mark sheet of class V, however, her father is not able to state the date of birth of the prosecutrix. He is also not able to state the date of birth of any of his other child. He says that he was married about 21 years back and his first child - Champabai was born after two years of the marriage and thereafter the prosecutrix was born in next two years, thus, the age of the prosecutrix is 17 years. PW-8 Asha Lata Badge, the Headmaster of the school admits that no child is admitted to

the school unless he/she is more than 6 years of age, however, she says that the prosecutrix was admitted in the school on 05.07.2002 with her date of birth mentioned as 22.01.1997. If this date of birth is correct, the prosecutrix was less than 6 years of age at the time of admission in class one.

6. Reading the statements of Sevaram (PW-7) and Smt. Asha Lata Badge (PW-8) together, it appears, there is lack of conclusive proof of the fact that the prosecutrix was less than 16 years of age on the date of incident. The incident having occurred prior to 03.02.2013, the age of consent was 16 years and not 18 years which came to be introduced w.e.f. 03.02.2013 by the Act No.13 of 2013. Thus, the prosecution has failed to prove that the prosecutrix was under the age of consent at the time of offence. She being a consenting party in the incident which continued for a period of 2 months and her father admits that she was in love with the accused, the ingredients of offence under Section 376 of I.P.C. is not made out.

7. No case for grant of leave to appeal is made out.

8. Accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi