

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRA No. 766 of 2015

- Prakash Anchala, S/o Sankuram Anchala, Aged about 20 years, R/o- village- Sode Bhurkapara, Police Station- Antagarh, District- North Bastar Kanker (C.G.) ----- **Appellant**

Versus

- State of Chhattisgarh, through- Station House Officer, Police Station- Antagarh, District- North Bastar Kanker (C.G.) ----- **Respondent**

For Appellant : Smt. Minu Banerjee, Advocate.

For State/Respondent : Shri Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna SharmaJudgment on Board02/03/2020

1. This appeal is preferred against the judgment dated 17th April, 2015 passed by Additional Sessions Judge (F.T.C.)/Special Judge (Protection of Children from Sexual Offences (POCSO) Act, 2012), North Bastar Kanker (C.G.) in Sessions Trial No. 23/2013 wherein the said Court convicted the appellant for commission of offence under Section 376(1) of the Indian Penal Code (for short "the IPC"), 1860 and Section 4 of the Act, 2012 and sentenced him to undergo rigorous imprisonment for seven years and fine of Rs. 500/- and rigorous imprisonment for seven years and fine of Rs. 500/- respectively with further default stipulations. Both the sentences shall run concurrently.
2. In the present case, prosecutrix is PW-1. Ram Charan Anchala (PW-3) is father of the prosecutrix. As per version of this witness, the prosecutrix is his eldest daughter and her age is about 21-22 years. Headmaster Lakshan Ram Sarfe (PW-8) deposed before

the trial Court regarding school register, but he is not aware as to who admitted the prosecutrix in school. He further deposed that no declaration of father or mother on record and no birth certificate maintained by the Kotwar is also produced. From his evidence date of birth of the prosecutrix is not established.

3. Dr. R.K. Singh, Radiologist (PW-11) deposed after x-ray examination of the prosecutrix. He recorded her age to be 14-17 years, but he admitted in cross-examination that there may be variation of two years of the age assessed by him. From his evidence, the age of the prosecutrix may be 19 years. From the entire record, it is not established that the prosecutrix was below 18 years in the month of July, 2013.
4. The prosecutrix (PW-1) though deposed in her examination-in-chief that the appellant committed rape on her, but in her cross-examination she admitted that she was in love affair with the appellant and she maintained physical relation with him out of consent. Maintaining physical relation by a major with other major has not been made criminal offence. After assessing the entire evidence, charges levelled against the appellant is not established.
5. Accordingly, appeal is allowed. Conviction and sentence imposed on the appellant is hereby set aside. The appellant is acquitted from the said charges. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge