

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1694 of 2017

Rajkumar Poya, S/o Shivbalak Poya, aged about 21 years, R/o Village- Hariharpur, Kachharpara, Police Station- Chandraura, District- Surajpur (C.G.)
---- Appellant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station- Katghora, District- Korba (C.G.)
---- Respondent

For Appellant : Mr. Aditya Khare, Advocate.

For State/respondent : Mr. Raghvendra Verma, Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

09/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 14.07.2017 passed by Special Judge (POCSO), Katghora, District- Korba (C.G.) in Special (POCSO) Case No. 021/2016, wherein the said court convicted the appellant for commission of offence under Section 363 of IPC, 1860 and sentenced to undergo R.I. for 4 years and fine of Rs. 2000/- with further default stipulations.
2. In the present case, the prosecutrix is PW-1. The appellant was charge-sheeted for commission of offence under Sections 366 (A) of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012, but the trial court acquitted the appellant for the said charges. The trial court recorded finding that the prosecutrix (PW-1) was minor at the time of incident i.e. on 07.06.2016 and she has been taken from lawful guardianship without consent of guardian. The prosecutrix (PW-1) deposed before the trial court that she did not identify the present appellant and she is not able to state whether the appellant is

the person who taken her to Village- Hariharpur. The prosecutrix (PW-1) is subjected to leading questions by the prosecution side as she has not supported version of the prosecution and in answer of leading question, she replied that the appellant taken her to Village- Hariharpur. The prosecutrix (PW-1) herself is not stable in her version whether the appellant had taken her or not.

3. To ascertain age of the prosecutrix, teacher- Anuj Ram Jaiswal (PW-7) examined before the trial court, but this witness deposed before the trial court regarding admission of the prosecutrix in Class-VI. This witness has not deposed about her admission in Class-I. From his evidence, it is not clear as to who admitted the prosecutrix in school and whether her date of birth is mentioned as per birth certificate or as per saying of some person. The person who admitted the prosecutrix in the school in Class-I has not been examined, therefore, her date of birth is not proved to be 19.06.2001.
4. Looking to the evidence of the prosecutrix (PW-1) who has not supported version of the prosecution in examination-in-chief, the finding arrived at by the trial court is not sustainable.
5. Accordingly, the appeal is allowed at motion stage itself. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 363 of IPC. The appellant is reported to be on bail. His 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