

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1836 of 2019

Sanjay Kumar Nayak S/o Ganpat Nayak Aged About 19 Years R/o
Near Naveen High School, Ayodhyapuri, Police P.S. Darri District
Korba Chhattisgarh. **---- Appellant**

Versus

State of Chhattisgarh Through Police Station Darri District Korba
Chhattisgarh. **---- Respondent**

For appellant : Mr. Badruddin Khan, Advocate

For State : Mr. Afroj Khan, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

17.03.2020

1. Heard on I.A. No.1/2019, which is an application for condonation of delay in filing the instant appeal.
2. On due consideration, the application is allowed and the delay of 163 days in filing the instant appeal is hereby condoned.
3. This appeal is preferred against the judgment dated 12.04.2019 passed by Special Judge(POCSO Act) Katghora (C.G.) in Special Case(POCSO) No.40/2017, wherein the said Court convicted the appellant for charge under Section 363(twice), 366-A of Indian Penal Code, 1860 and under Section 12 of POCSO Act, 2012 and sentence him to undergo R.I. for 3-3 years with fine of Rs. 500-500/-, R.I. for 5 years with fine of Rs. 1000/- with default stipulations.
4. In the present case, prosecutrix are (PW-1) and (PW-2). No birth certificate of any of the prosecutrix was produced before the trial Court. Phoolkumari Kerketta (PW-12) who is Head Master of Govt. Primary School, Ayodhyapuri, District- Korba deposed before the trial Court that maternal grand mother of

the prosecutrix (PW-1) came to school for her admission. It means mother or father have not admitted the said prosecutrix in school. In absence of birth certificate and in absence of proof that admission has been done by the parents of the prosecutrix(PW-1) date of birth mentioned by maternal grand mother is not sufficient to establish date of birth of the prosecutrix.

5. G.R. Kashyap(PW-13), who is Head Master of Power House Primary Middle School No.2 Darri, District- Korba deposed that prosecutrix (PW-2) was admitted in school on the basis of Transfer Certificate of class 5th. This witness also not able to tell as to who really admitted the prosecutrix (PW-2) in the said school. No birth certificates of both of the prosecutrix was produced before the trial Court. From the evidence of these two school authorities, the date of birth of both of the prosecutrix was not established.
6. Arjun @ Angad Das Mahant (PW-3) is father of Prosecutrix (PW-2) he also did not depose regarding date of birth of the prosecutrix (PW-2) before the trial Court. Mrs. Sunita Mahant (PW-5) who is mother of the prosecutrix(PW-2) also did not depose regarding date of birth. In absence of sufficient evidence regarding date of birth of both of the prosecutrix it is not proved that on date of incident age of both of the prosecutrix were below 18 years.
7. Prosecutrix (PW-1) deposed before the trial Court that she left her home by her own will and accompanied with the appellant. This witness moved with the appellant in different places and

from her version it is clear that she was willing to marry with one Ravi @Tushar. From her evidence, it is not established that appellant entices or taken her from her lawful guardianship. Again, from her evidence, it is not established that the appellant seduce her to marry or for illicit physical relation. Other prosecutrix (PW-2) deposed on same line. As per version of this witness, she was also accompanied with the present appellant by her own will and she was in affair with the appellant. From her evidence, it is clear that she was visited many places with the present appellant Sanjay Kumar Nayak. The prosecution side put a different story but from the evidence of both the prosecutrix, it is not established that the appellant seduce her for illicit intercourse or for marriage.

8. Taking into consideration, the entire evidence charge under Section 363 which is charge for kidnapping a minor from lawful guardianship and again charge under Section 366 of IPC which is for seducing a girl to marry or for illicit intercourse is not established.
9. Accordingly, the appeal is allowed. The appellant is acquitted of the said charge. His conviction and sentence is hereby set-aside. The appellant is reported to be in custody, he be released forthwith, if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
Judge