

(2020) 02 CHH CK 0053
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 367 Of 2019

Maharaja Banjare

APPELLANT

Vs

State Of Chhattisgarh Through

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366
Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2020) 02 CHH CK 0053

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Smita Jha, Afroj Khan

Final Decision : Allowed

Judgement

1. This appeal is preferred against the judgment dated 17th of January, 2019 passed by 7th Additional Sessions Judge, Raipur (C.G.) in Special Criminal

Case No.23/2018, wherein the said Court convicted the appellant for charge under Sections 363 & 366 of Indian Penal Code, 1860 and under Section

6 of the POCSO Act, 2012 and sentenced him to undergo R.I. for 2 years and fine of Rs. 500/-, R.I. for 3 years and fine of Rs, 1000/-, R.I. for 10

years and fine of Rs. 5000/- with default stipulations.

2. In the present case, prosecutrix is (PW-1). As per version of prosecution the prosecutrix (PW-1) was minor on the date of incident that is 15th of

October, 2017. Appellant took her from her lawful guardianship to seduce her for illicit intercourse and was subjected to aggravated penetrative sexual

assault that is why report was lodged against the appellant and after investigation the appellant was charge-sheeted and convicted as mentioned

above.

3. Learned counsel on behalf of the appellant submits that age of the prosecutrix is not proved to be below 18 years of age on date of incident i.e 15th

of October, 2017 therefore, it is not a case of taking the minor from her lawful guardianship. The prosecutrix being major consented to move with the

appellant and thereafter, have lived in different places for considerable time and maintained physical relation out of consent, therefore, it is not a case

under Section 366 of IPC and Section 6 of POCSO Act, 2012. The trial Court has not evaluated the evidence in its right perspective therefore, finding

of the trial Court is to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable

to be interfered with invoking jurisdiction of appeal.

5. First question for consideration of this Court is whether the prosecutrix is minor on the date of the incident i.e 15th of October, 2017. Mahettar Das

Ratre (PW-2) is father of the prosecutrix (PW-1). As per version of this witness, he is unable to recollect date of birth of the prosecutrix, this witness

has not disposed regarding date of birth of prosecutrix. As per version of this witness he recorded date of birth of his children in school by imagination.

From his entire evidence, date of birth of the prosecutrix is not established. Who admitted prosecutrix in Government middle school, Pirda is also not

clear. Teacher of the said school Mr Sevaram Sahu (PW-4) brought school register in which it is mentioned that the prosecutrix was admitted in class

6th . This witness is unable to state as to how the date of birth is recorded in the said school register and on what basis the said entry was made. As

per version of this witness the prosecutrix admitted in class 6th in his school and she was not admitted in class-1st therefore, in absence of school

register of class 1st and in absence of evidence of person who admitted the prosecutrix with correct date of birth, the age of the prosecutrix is not

proved to be below 18 years on the date of incident.

6. Prosecutrix (PW-1) deposed before the trial Court that she visited to Delhi alongwith the appellant and also visited other places and stayed with the

appellant and she further deposed that both were living in the rented house about a month where they maintained physical relation. This witness

deposed that she did not narrate to anyone that appellant brought her forcefully and exploited her (Para-12 and 13). Taking into consideration the

entire statement of the prosecutrix, it is difficult to hold that prosecutrix maintained relation with the appellant for number of times without her consent and against her will therefore, it cannot be said that appellant seduced her to maintained illicit relation. As age of the prosecutrix is not proved to be below 18 years, therefore, she was not minor on the date of incident. For commission of offence under Section 363 of IPC, it has to be established that minor is taken out from the custody of lawful guardian but that is not a case here. Again, seducing for illicit relation has also not established therefore, charge under Section 363 and 366 of IPC is not established.

7. For commission of offence under Section 6 of the POCSO Act, 2012 prosecutrix must be child and as per definition of child she should be less than 18 years of age but that is not the case here. Therefore, charge under Section 6 of the Act, 2012 is also not established. Maintaining physical relation with major out of her consent is not made punishable, therefore, finding recorded by the trial Court is not sustainable.

8. 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 set at liberty forthwith, if not required in any other case.