

**Jitmohan Lohar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/529451](http://sooperkanoon.com/529451)

**Court :** Orissa

**Decided On :** Feb-18-1997

**Reported in :** 1997CriLJ2842; 1997(I)OLR366

**Judge :** P.K. Misra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 363 and 376

**Appeal No. :** Jail Criminal Appeal No. 245 of 1993

**Appellant :** Jitmohan Lohar

**Respondent :** State

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** H.S. Mishra and S.S. Patra

**Disposition :** Appeal dismissed

**Judgement :**

**P.K. Misra, J.**

1. The appellant assails the order of conviction under Sections. 363 and 376 of the Indian Penal Code.

2. An FIR was lodged by PW 3 on 26-8-1994 wherein it was alleged that his daughter, aged about twelve years and six months, had gone away somewhere on 15-8-1994 and had returned on 26-3-1994 and on being asked, she had disclosed that she had gone to Dadma with the accused and there the accused had married her by applying vermilion on her fore-head. The case was initially registered under section 363, IPC and subsequently charge-sheet was submitted under Sections. 363 and 376, IPC.

3. The plea of the accused was one of denial.

4. The trial Court on discussion of evidence on record came to hold that the age of the victim was less than 16 years and she had been taken away from the custody of her parents and subsequently subjected to sexual intercourse. On the aforesaid finding, the appellant was convicted under Sections. 353 and 376, IPC and sentenced to undergo six months and seven years respectively. Both the sentences were directed to run concurrently. The trial Court also directed that the accused person should pay compensation of Rs. 2,000/- to the victim in two instalments within six months, failing which he was to undergo further rigorous imprisonment for one year.

5. In this appeal, it is contended that the materials on record indicates that the victim had gone away with the accused voluntarily. It is further contended that sexual intercourse, if any, was with the consent of the victim and as such the appellant should be exonerated.

6. The victim has been examined as PW12. She had stated her age to be 13 years at the time of deposition. Her father, PW 3, has stated that at the time of occurrence the age of her daughter was about 13 years. A certificate from the School Admission Register, produced on behalf of the prosecution also indicates that the age of the victim was 13 years. The evidence of PWs 3 and 12 regarding the age of PW 12 has not been challenged in any manner in cross-examination. Though the doctor on the basis of ossification test opined that the age of the victim was between 14 to 16 years, such opinion evidence cannot outweigh the consistent oral and documentary evidence regarding the age of the victim. Accordingly, I conclude that the age of the victim was 13 years at the time of

occurrence.

7. PW 12 in her evidence has stated that the accused met her while she was returning from School and told her to come to Rourkela as her brother was at Rourkela and she went there with the accused by Bus. In the FIR which was lodged by the father of the victim, it was stated that on query the victim had told her father that she had gone with the accused to Dadma. It is apparent from the statement of the victim as well as the FIR that the victim had voluntarily gone and not forcibly taken by nor induced by the accused to go with him. In such state of evidence, it is difficult to sustain the conviction under section 363, 1PC.

8. It is next contended that the materials on record do, not establish that there was any forcible sexual intercourse. It is submitted that the FIR discloses as if there was marriage between the victim and the accused. The question as to whether there was marriage between the victim and the accused and as to whether there was any sexual intercourse with consent or not recedes into background, in view of the evidence that the victim was aged 13 years, that is to say less than 15 years at the time of occurrence. The statement of the victim that the accused had sexual intercourse with her is well-proved and as such keeping in view the age of the victim who was less than 15 years it must be held that an offence punishable under section 37, IPC had been committed irrespective of the question whether the victim was married to the accused or not and irrespective of the question of consent. Accordingly, I uphold the conviction of the petitioner under section 376, IPC. However, keeping in view the circumstances of the case, I reduce the period of imprisonment to four years' rigorous imprisonment. The order of the trial Court regarding payment of compensation of Hi. 2,030/- to the victim by the accused is sustained.

9. Subject to the aforesaid modification in sentence, the appeal is dismissed.