

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 100 of 2002

- Ashok Kumar, S/o. Ramchandra Gupta, aged about 25 years, R/o Village Aara, P.S. Sitapur, District – Surguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through P.S. Sitapur.

---- Respondent

For Appellant : Mr. Shakti Raj Sinha, Advocate
For Respondent / State : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 04-09-2015

- 1) This criminal appeal is directed against the judgment of conviction and order of sentence dated 04.01.2002 passed by the District & Sessions Judge, Surguja at Ambikapur in Sessions Trial No. 443/2000, whereby and whereunder after holding the appellant guilty for abducting, compelling the prosecutrix to marry and for committing rape on prosecutrix (PW-5), the trial Court has convicted the appellant under Sections 363, 366 and 376 of the IPC in the following manner :-

CONVICTION	SENTENCE
U/s 363 of the IPC	3 years RI and fine of Rs. 2,000/-, in default of payment of fine, additional RI for six months.
U/s 366 of the IPC	3 years RI and fine of Rs. 2,000/-, in default of payment of fine, additional RI for six months.
U/s 376 of the IPC	7 years RI and fine of Rs. 5,000/-, in default of payment of fine, additional RI for six months. All the sentences were directed to run concurrently.

- 2) Conviction is impugned on the ground that without any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, prosecutrix (PW-5) was minor on the date of incident and it is alleged that the appellant under inducement of her marriage took her away from the custody of legal guardianship of her father Ramashankar (PW/6) to village Salka. When the prosecutrix was not found in the house, her father Ramashankar (PW-6) along with the help of villagers started searching the prosecutrix and on search he found his daughter accompanied by the appellant. He brought his daughter back to his house, but he did not report the matter to Police Station. It is further alleged that the appellant again abducted her on 20.08.2000 from her house and took away her to Kasabel, ravaged and committed rape on her. Father of prosecutrix Ramashankar (PW-6) lodged the report on 20.08.2000 in police station, Sitapur. Initially police registered the offence under Sections 363 and 366 of the IPC and during investigation offence under Section 376 of the IPC was added.
- 4) After completion of investigation, charge-sheet was filed against the accused and he was charge-sheeted under Sections 363, 366 and 376 of the IPC.

- 5) In order to bring home the guilt of the appellant, the prosecution has examined as many as eight witnesses in support of its case. The appellant was examined under Section 313 of the Cr. P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
- 6) After affording opportunity of hearing to the parties, learned District & Sessions Judge, convicted and sentenced the appellant in the aforesaid manner.
- 7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 8) Learned counsel appearing for the appellant vehemently argued that it was not established by the prosecution that the prosecutrix was below 18 years of age at the time of incident and also failed to prove that the appellant has committed kidnapping or abducting of minor girl and after that he committed rape on her. Therefore, the finding of the age of the prosecutrix was perverse and also looking to the conduct of the prosecutrix, medical report, FSL report, no such offence under Sections 363, 366 and 376 of the IPC is made out against the appellant.
- 9) *Per contra*, learned State counsel opposing the criminal appeal supports the impugned judgment.

- 10) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 11) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of prosecutrix. The prosecution adduced oral as well as documentary evidence to prove the age of the prosecutrix. So far as oral evidence is concerned, prosecutrix (PW-5) has stated that her birth month and year is May, 1995. Ramashankar (PW-6) has stated in his deposition that date of birth of prosecutrix is 01.07.1985, but they have not stated on what basis they have stated so. Neither they have brought on record to show that the age of the prosecutrix was below 18 years on the date of incident nor filed any document with respect to the age of the prosecutrix to support of the prosecution case. So far as documentary evidence as to age determination of the prosecutrix is concerned, the School Entry Register (Ex.P-1) given by Head Master of the School was produced which shows that entry is related with the prosecutrix, document was prepared on the basis of original document, but prosecution has not examined this witness, who has made entry of date of birth of the prosecutrix in the said "*Dakhil-Kharij* Register", therefore, it was not properly and legally proved on record that on whose information the entry of date of birth was made in the said register and who has made entry of same. Prosecution has not clarified that why they have not presented that witness in the Court.

Prosecution has also not tried to collect the Kotwari Register for proving the date of birth of the prosecutrix. Prosecution has also not examined who has conducted the ossification test of the prosecutrix, but in record ossification test report is available as Ex.P-10. This report shows that on test it was found that the age of the prosecutrix was approximately 17 to 19 years. The report shows, according to 2 years margin, that prosecutrix was above 18 years old at the time of incident, whereas it was shown by the report of Radiologist that prosecutrix was above 18 years. Therefore, it is clear that on the date of incident the prosecutrix was not minor.

- 12) Prosecution evidence clearly shows that the prosecutrix was found to be of sufficient understanding, she was found to have accompanied the accused of her own will. She did not put any resistance nor she raised cries when she was being eloped, it cannot be said that accused enticed the prosecutrix or committed rape on her. Entire evidence on record itself shows that she was found to be willingly and a consenting party, where the prosecution has failed prove that prosecutrix was below 18 years of age at the relevant time. It is held that offence under Section 363 was not made out. Dr. (Smt.) Sarita Singh (PW-4), who has examined the prosecutrix has stated that she did not find any injury over the body of the prosecutrix. She opined that no definite opinion can be given about recent intercourse. She proved her examination report

as Ex.P-4. As per medical report, it is also proved that prosecutrix was raped by someone.

- 13) Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the entire evidence, it is clear that prosecution has failed to prove the fact that the prosecutrix was below 18 years of age on the date of incident. Prosecution has also failed to prove that the appellant has committed kidnapping or abducting of minor girl in order to compel her to marry and thereafter committed rape on her and thereby the appellant committed offence under Sections 363, 366 and 376 of the IPC.
- 14) In the result, the appeal filed by the appellant is allowed. Conviction and sentence imposed upon him by the trial Court is hereby set aside. He is acquitted of the charges. He be released forthwith if not required in any other case.

Sd/-
(I.S.Uboweja)
JUDGE