

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.985 of 2014**

- Fuleshwar Yadav @ Baiga S/o. Dhansai, Aged about 21 years,
R/o. Rasmada Chowki Anjora, District – Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: P.S. Pulgaon, Distt. Durg (CG)

---- Respondent

For appellant	: Shri PR Patankar, Advocate.
For Respondent	: Shri Roshan Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****06/07/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 13.04.2012 passed by Second Additional Sessions Judge, Durg in Session Case No.163/2011 whereby and whereunder the learned trial judge after holding the appellant guilty for commission of offence under Sections 363, 366 and 376 of the Indian Penal Code for kidnapping prosecutrix (PW-2) (name not mentioned) from lawful guardianship, inducing her to compel for illicit intercourse and for committing rape against her will and consent, sentenced him to undergo rigorous imprisonment for five years, five years and seven years along with fine of Rs.500/-, 500/- & 1000/-, in default of payment of fine, to further undergo RI for one month, one month and two months respectively with a direction to run the sentences concurrently.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant, thereby committed illegality.

3. As per the case of the prosecution, on 27.3.2011 at about 5.00 pm, when Godavari Soni (PW-3), mother of the prosecutrix, was in the house, prosecutrix reached there and informed her that the appellant abducted her and compelled her to commit intercourse against her will and consent with a false promise of marriage near the railway track. Godavari Soni (PW-3) lodged report (Ex-P/5) which was registered as unnumbered FIR at Out Post Anjora. Subsequently the same was duly registered. After obtaining necessary permission, the prosecutrix was sent for medical examination. During investigation, the appellant was also arrested. He was also examined by the doctor.

4. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The Investigating Officer prepared spot map (Ex-P/4). Undergarments of the prosecutrix and the appellant were seized. The prosecutrix was examined by radiologist and the doctor opined the age of the prosecutrix as between 15 to 16 years.

5. After completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Sessions, Durg. Learned Additional Sessions Judge received the case on transfer for trial. During the trial charges were framed against the appellant under Section 363, 366 and 376 of the IPC. The appellant denied the charges and prayed for trial.

6. In order to prove the guilt of the appellant, the prosecution examined 10 witnesses. Statement of the accused appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

7. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.

8. I have heard learned counsel for the parties and perused the record of the trial Court.

9. Learned counsel for the appellant vehemently argued that in totality and as instructed, the appellant is not contesting the judgment on its merits. He is confining his argument only on the point of quantum of sentence. As submitted, the appellant was aged about 21 years at the time of the incident, he was the first offender and there was no likewise criminal history against him. He is a poor person making his livelihood by grazing cattle. As he is financially weak, he could not file the appeal on time and the appeal was preferred after 836 days of its limitation. Learned counsel for the appellant further submits that the appellant will not commit any offence again. He further submits that the appellant is in jail since 28.3.2011 thereby he completed his sentence for about 4 years 3 months and 8 days. Looking to the various facts surfaced during cross examination, learned counsel prayed that the appellant may be given opportunity to lead a peaceful life in the society without committing any crime in future.

10. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant and submitted that the trial Court after due consideration looking to the act committed by the appellant duly convicted him which requires no interference, hence, the appeal may be dismissed.

11. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

12. The appellant is not contesting this appeal on its merits regarding holding him guilty under Sections 363, 366 & 376 of the IPC. Learned counsel for the appellant limits his arguments on the point of quantum of sentence only. Even on perusal of the entire evidence, I do not find any illegality or infirmity in the judgment passed by the trial Court.

13. So far as the quantum of sentences are concerned, the appellant is in jail for about 4 years 3 months, he was aged about 21 years at the time of the incident and he was the first offender and as per the record, he is a poor villager, earning his livelihood by grazing cattle and also on account of his poor economic condition, he could not file the criminal appeal in time. After a lapse of 836 days he could manage to file a criminal appeal while he was languishing in jail. No any criminal antecedent of likewise offence is shown and also upon considering the facts mentioned by the prosecutrix herself in para 3 and 4 of her cross examination, while considering the entire facts and circumstances this Court is of the considered view to grant an opportunity by imposing lesser sentence to the appellant.

14. Consequently, the appeal is allowed in part. Conviction of the appellant under Sections 363, 366 and 376 of the IPC are hereby affirmed. Fine sentence passed by the trial Court is also affirmed. Sentence passed by the trial Court under Section 363 & 366 of the IPC are also hereby affirmed. However, sentence passed by the trial Court under Section 376 IPC is hereby reduced and instead of RI for seven years, the appellant is sentenced for RI for five years only with a direction to run all the sentences concurrently. The appellant is in jail since 28.3.2011. The authorities concerned are directed to release the

appellant after completion of his sentence as per the order of this Court
after awarding him the benefit of remission as per law.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE

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