

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2704 of 1998

1. Guruprasad, S/o Shayamchand Satnami, aged about 18 years,
2. Haricharan, S/o Mahavir Satnami, aged about 19 years,
Both resident of village – Rambhatha, P.S. Dabhara, District – Bilaspur (M.P.) (now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant : Mr. Dheerendra Pandey, Advocate

For Respondent/State : Smt. Shobha Kashyap, Dy. G.A.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 25-02-2016

- 1) The appellants have preferred this appeal assailing the judgment of conviction and order of sentence dated 17.10.1998 passed by the Additional Sessions Judge, Shakti, Distt. Bilaspur in Sessions Trial No.15/1998, whereby & whereunder the trial Court after holding the appellants guilty for kidnapping, abducting or inducing woman to compel her for marriage in sharing common intention, convicted them under Sections 363/34 and 366 of the IPC and sentenced them to undergo R.I. for one year & to pay fine of Rs.1,000/- each, in default of payment of fine to undergo additional R.I. for 3 months and to undergo R.I. for five years & to pay fine of Rs.2,000/- each, in default of payment of fine to undergo additional R.I. for one year.
- 2) The facts, briefly stated, are as under :-

2.1 On 18.11.1997 at about 8.00 a.m., minor daughter of Parmeshwar Prasad i.e. prosecutrix (PW-1) alongwith her elder sister Pushplata (PW-3) went to Katekoni School. The elder sister came back to her house at village Rambhatha due to some stomach-ache, but the prosecutrix had not returned upto evening. Parmeshwar Prasad (PW-2), father of the prosecutrix started searching her and could not trace out her whereabouts, thereafter, he went to Police Station and lodged the reported vide Ex.P-3. Prosecutrix and accused/appellant Guruprasad were caught by the police at Dabhara bus station, while they were returning back to village Rambhatha.

2.2 During the course of investigation, it was revealed that accused Guruprasad, with the help of another accused Haricharan, had abducted the prosecutrix and during that period accused Guruprasad had committed forcibly sexual intercourse with the prosecutrix.

- 3) Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Sakti, who in turn committed the case to the Court of Sessions, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

- 4) In order to prove the guilt of the accused/appellant, the prosecution examined as many as twenty four witnesses to support its case. Accused were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question. Accused also examined one defence witness namely Baratu (DW-1) to support their case.
- 5) After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.
- 6) I have heard learned counsel for both the parties, perused the judgment impugned and record of trial Court.
- 7) Learned counsel appearing for the accused/appellants submitted that age of the prosecutrix is core issue in the present case, prosecution has submitted the birth certificate of the prosecutrix, but same has not been proved by its maker. He further submitted that as per ossification test, age of the prosecutrix may be approximately 15 to 17 years, but variation of two years has not been considered by the trial Court. He also submitted that the prosecutrix was a consenting party, right from the beginning she had visited various places along with accused Guruprasad, but, having an ample opportunity, she did not call for help anywhere. Prosecution has not proved its case beyond reasonable doubt,

therefore, the appeal may be allowed and the appellants be acquitted from the charges framed against them.

- 8) *Per contra*, learned State counsel opposed the appeal and submitted that prosecution has proved its case beyond reasonable doubt.
- 9) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 10) Parmeshwar (PW-2), father of the prosecutrix has stated that the date of birth of the prosecutrix is 27.07.1982 and in support of his statement he has produced birth certificate (Ex.P-10) which was seized at his instance vide seizure memo Ex.P-9.
- 11) Thakurlal Chandra (PW-6), Principal of Katekoni school, has deposed that he has issued the birth certificate of the prosecutrix (Ex.P-10), according to that certificate, date of birth of the prosecutrix is 27.07.1982. But, in his cross-examination he admitted that entry made regarding the prosecutrix in Dakhil Kharij Register is not by his handwriting. Prosecutrix has not examined that person who has written the details of prosecutrix admission and date of birth, therefore, it is clear that prosecution has totally failed to prove the school entry register.
- 12) No doubt, the age of the prosecutrix is core issue in the present case. A minute scrutiny of the evidence goes to show that through ossification test it was admitted by doctor R. Jitpure (PW-15) that

her age may be approximately 15 to 17 years on the date of incident, variation of two years plus or minus was possible. There were apparent contradictions in the report of doctor, statements of the prosecutrix and her father regarding the age of the prosecutrix, therefore, benefit of doubt should go to the accused and as such the victim could not be held to be under the age of 18 years on the date of incident.

- 13) Prosecutrix (PW-1) stated that accused Guruprasad met her in school and told her to accompany him for moving Dabhara, firstly she refused and then after threatening by the accused, she accompanied him to Dabhara, Kharsiya, Raigarh, Baramkela - Gobarsingha and after visiting for two days, when they were coming back, at the bus stand of Dabhara, police had caught them. Prosecutrix has never stated that accused had pretext to marry her. She admitted that when accused met her in school, at that time 30-40 persons were present there.
- 14) From perusal of the statement of the prosecutrix, it is crystal clear that it is impossible for the accused to give her threat before those persons. In her statement she also admitted that in whole visit, many persons were present there. Though there was an ample opportunity to call for help, but she did not call for any help, which shows that she could have very well accompanied the accused. These all goes to show that she was a consenting party for every incident. She also admitted that accused Haricharan was

present at bus station like some others which shows that he has not participated any active role in the question of crime.

- 15) To part with, prosecution failed to prove the age of the prosecutrix that she was a minor at the time of incident, therefore, benefit of doubt must go to both accused. The story narrated by the prosecutrix does not inspire confidence and same does not seem to be credible, clinching, admissible and trustworthy and it is the case of consent.
- 16) Considering the above facts and circumstances of the case, in the opinion of this Court, the prosecution has failed to prove commission of abduction of a minor girl - prosecutrix (PW-1) punishable under Sections 363/34 and 366 of the IPC. The trial Court while convicting and awarding the sentence to the appellants, has not considered the relevant aspects of the matter and thereby committed illegality.
- 17) In the result, the appeal filed by the appellants is allowed. Conviction and sentence awarded against them by the trial Court is set aside. They are acquitted of the charges. Fine amount, if paid, shall be refunded to them.
- 18) The appellants are stated to be on bail, their bail bonds shall continue for a further period of 6 months as per requirement of Section 437A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE