

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 146 of 2013**

Rajendra Khalkho S/o Anant Ram Aged About 22 Years R/o
Jamdi Khurd, Pasan, Distt. Korba (C.G.)

---- Appellant**Versus**

State of Chhattisgarh through PS Pasan, Distt. Korba C.G.

---- Respondent

For appellant	:	Mr. Anand Gupta, Advocate
For Respondent/State	:	Mrs. Shobha Kashyap, Dy. Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****29/11/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-8-2012 passed by the Additional Sessions Judge, Katghora, Korba in Sessions Trial No. 86/2011 whereby and whereunder learned trial Court after holding the accused/appellant guilty for commission of kidnapping of the P.W. 2 minor prosecutrix (name not mentioned) with an object to compel her for illicit intercourse and committing rape against her will and consent convicted him under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (in brevity 'IPC') and sentenced him to undergo RI for 2 years, 3 years and 7 years with a direction to run all the substantive jail sentences concurrently along with fine sentence of Rs. 500/-, 500/- and 500/- and in default of payment of fine to further undergo additional RI for 6 month, 6 month and 6 months respectively with a further direction that period of custody from 18-5-2011 till the date of judgment i.e. 30-8-2012 be set off under the provisions of Section 428 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.')
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and

sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, on 12-5-2011 the accused/appellant took the prosecutrix P.W. 2 on the pretext that her friend is calling her and thereafter took her to Raipur on the pretext of marriage and kept her in the house of his brother, there he committed forceful intercourse against her will and consent. On 16-5-2011 she was rescued by her family members and recovered. Thereafter she lodged FIR Ex. P-1 before Pasan police on 18-5-2011 who registered Crime No. 59/2011 under Sections 363, 366 and 376 of the IPC. After obtaining necessary consent from the parents, the prosecutrix was examined by P.W. 9 Dr. Smt. R. Dahire who noticed no injury over the body of the prosecutrix and did not find any symptom of recent intercourse as she was habituated to intercourse, hymen old ruptured. She gave report vide Ex. P-4. The accused/appellant was also arrested on 18-5-2011. P.W. 7 Dr. Roshan Verma after examination found him capable of committing intercourse and gave his report Ex. P-7. The documents regarding the age of the prosecutrix were seized and as per documents, the date of birth of the prosecutrix was 9-12-1988 and she was minor on the date of incident. Police also recorded statements of the witnesses under Section 161 of the Cr.P.C. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Katghora who registered the same as Criminal Case No. 677//2011 and committed the same vide committal order dated 3-10-2011. Learned Additional Sessions Judge received the case on transfer and conducted trial. Learned trial Judge framed charges under Sections 363, 366 and

376 of the IPC.

4. In order to prove the guilt of the appellant, the prosecution examined 9 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.
5. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.
6. I have heard learned counsel for the parties and perused the record of the trial Court.
7. Learned counsel for the appellant submits that looking to the entire evidence adduced regarding age, consent and other facts, he is not contesting instant criminal appeal on its merit. He is confining his argument only on the point of quantum of sentence. He is also not arguing against fine sentence. It is submitted that the accused/appellant has remained in jail for 5 years, 6 months and 16 days till date. As all the sentences are directed to run concurrently, he has served sentence for offence u/S. 363 and 366 of IPC. The accused/appellant was aged 22 years at the time of incident. The prosecutrix and the accused both belong to the same community, residents of same village. The incident happened prior to 3-2-2013. As per existing law, for offence under Section 376 sub-section (1), IPC and its proviso, the Court may for adequate and special reason impose a sentence of imprisonment for a term less than seven years. It is submitted that the accused was not in a position to file criminal appeal within time and also he is not represented by his regular counsel for final hearing. He will not commit any offence in future. Looking to the period of detention he

may be sentenced to the period already undergone by him.

8. Per contra, learned counsel for the respondent/State submits that as the accused/appellant on the pretext of marriage took the minor prosecutrix from lawful custody of her guardian and thereafter kept her at Raipur and committed rape, looking to the entire facts, he has been adequately sentenced by the trial Court and hence the appeal may be dismissed on all counts.
9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
10. Learned counsel for the appellant has not argued on conviction part of the sentence and also the fine sentence. Even otherwise after perusal of the entire evidence, it appears that the prosecutrix was minor at the time of the incident. She was taken to Raipur without the consent from the lawful guardian and committed rape. With this conviction awarded to the accused/ appellant is proper and no interference is required in conviction part of the judgment. After perusal of fine sentence awarded to the accused/appellant it cannot be held as excessive. Consequently, fine sentence awarded to the accused by the trial Court with default clause also does not call for any interference.
11. So far as substantive jail sentence is concerned, the substantive jail sentences are directed to run concurrently by the trial Court as per para 24 of the judgment. With this, the accused/appellant has served jail sentence awarded under Sections 363 and 366 of the IPC. For Section 376 of the IPC, accused/appellant has been awarded RI for 7 years. Upon considering the entire facts, medical evidence as shown in Ex. P-4, further the accused/ appellant is in jail since 5 years 6 months and 11 days, he is the first offender,

both the accused/appellant and the prosecutrix belong to the same community and place, looking to the entire facts and as the Court may impose less than minimum sentence as the matter belongs to prior to the Criminal Law (Amendment) Act, 2013 with effect from 3-2-2013, in the considered view of this Court, the period already undergone by him may serve the ends of justice.

12. Consequently, the appeal filed by the appellant is allowed in part. Conviction of the accused/appellant under Sections 363, 366 and 376 of the IPC by the trial Court is hereby affirmed. Fine sentence awarded to the accused/appellant for all the above 3 penal sections along with default part is also hereby affirmed. Substantive jail sentence awarded to the accused/appellant for offence under Sections 363 and 366 of the IPC is also hereby affirmed. So far as substantive jail sentence awarded to the accused/appellant under Section 376, IPC is concerned, instead of RI for 7 years, he is sentenced to the period already undergone by him till date. The accused/appellant is in custody. He be released forthwith if not required in any other case and after realization of the fine amount as awarded. If fine amount is not paid as directed, then the accused/appellant shall serve the default sentence and will be released thereafter.
13. The appeal is partly allowed.
14. Registrar (Judicial) is directed to send a copy of this judgment to the trial Court for compliance.
15. Party may also file copy of the judgment before the trial Court.

Sd/-
(Chandra Bhushan Bajpai)
Judge