

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 273 of 1999**

Saul @ Sholley S/o Suleman Maseeh, Aged about 25 years, R/o Subhash, Block-Korba, P.S. Korba, District Bilaspur (Now Korba), At present Chirmiri, P.S. Chirmiri, Bangla Dafai, District Surguja.

---- Appellant**Versus**

State of Madhya Pradesh (Now C.G.)

---- Respondent

For appellant - Dr. Shailesh Ahuja, Advocate.
For Respondent/State - Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order****27/07/2017**

1. This instant appeal is against the judgement and conviction dated 26th December, 1998 passed by the Special Judge (Atrocity) Bilaspur in Special Criminal Case No. 231/96 whereby the appellant has been convicted u/s 363 of IPC and has been awarded RI for 3 years, u/s 366 of IPC, he has been awarded RI for 5 years and u/s 376 of IPC he has been awarded RI for 7 years and all the sentences were directed to run concurrently.
2. As per the facts of this case, the appellant who used to visit the house of the victim in 1995 allured and enticed away the minor girl from the lawful guardianship of her parents on the pretext of marriage. Subsequently, the appellant refused to marry the victim.
3. During the course of appeal, an affidavit has been filed by the victim and application has been filed for compromise of this case with an application attached with marriage certificate wherein it was stated that appellant has performed marriage with the victim. Said marriage was directed to be verified by the State counsel. Learned State counsel after

verification has filed the report which contains statement of Sushil Garg, who is councillor of the ward wherein appellant and victim are residing, one Ram Nivas Banjare who is brother of the victim and Babulal Burman who is uncle of the victim and one Chat Bai Baghel who is relative of the victim, they have all stated that the victim has performed marriage with the appellant 19 years back and out of the wedlock three children have born. Another affidavit along with verification is also placed on record which contains the signature of the victim wherein it is stated that victim has performed marriage with the appellant 19 years back and out of the wedlock three children have also born namely Honey Masih 18 years, Ashni 16 years and Shailendra 12 years. It is stated that after marriage they are living together and there is no dispute. Statement of the witnesses also shows that both the victim and the appellant are now residing as husband and wife for last 19 years i.e. for quite long period of time.

4. Prosecutrix is also present before this court. Prosecutrix was questioned by the State counsel so as to verify the authenticity of the application. Learned State counsel submits that prosecutrix on being asked has stated that she has performed marriage with the appellant and they are residing together for last 19 years and do not want to convict or sentence the accused/appellant she being wife.

5. Statement of the witnesses and the affidavit would show that prosecutrix has performed marriage with the appellant and they are residing together. Section 363, 366 and 376 of Indian Penal Code are non-compoundable and the court has imposed sentence of 3 years, 5 years and 7 years respectively. No fine have been imposed for the primary offence u/s 376 of Indian Penal Code wherein maximum punishment is 7 years have been imposed. Proviso clause provides that for special

reasons to be mentioned in the judgement the court may impose sentence of imprisonment for less than 7 years. In the instant case, the victim has married to the appellant and they are residing together for more than 19 years and out of the wedlock three children have born. Therefore, considering the circumstances and background of the case, no useful purpose would be served to sent the appellant again to jail. Appellant has already suffered the jail sentence of 6 months and 27 days in jail . Taking into such fact and circumstances following the principle in case of **Baldev Singh & Ors. Vs. State of Punjab** reported in (2011) 13 SCC 705, I deem it proper to hold the sentence as undergone and considering the fact that marriage has taken 20 years back, in the opinion of this court said sentence appears to be adequate to sub serve the ends of justice as otherwise punishment in the facts of this case would lead to defeat interest of justice. Judgement and conviction & sentence dated 26th December, 1998 passed by the Special Judge (Atrocity) Bilaspur in Special Criminal Case No. 281/96 is modified to the above extent. In the facts of this case, jail sentence of the appellant held to be undergone.

6. In view of the above, the appeal is disposed of.

Sd/-
Goutam Bhaduri
Judge