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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2151 of 2000**

Raghunath Singh S/o Amrit Singh Gond aged 40 years R/o Village Shankarpur Police Station Manendragrah District Koriya M.P. (now Chhattisgarh)

---- Appellant**Versus**

State of M.P. Through Police Station Manendragarh District Koriya M.P. (now Chhattisgarh)

---- Respondent

For Appellant	: Smt. Kiran Jain, Advocate.
For Respondent/State	: Shri Anupam Dubey, Deputy Advocate General with Shri Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****03/03/2017**

1. This appeal has been preferred against the judgment dated 3.7.2000 passed in Sessions Trial No.295 of 1999 by the Additional Sessions Judge, Manendragarh, convicting the Appellant under Sections 363, 366 and 376 IPC and sentencing him to undergo rigorous imprisonment for five years with fine of Rs.500/-, rigorous imprisonment for seven years with fine of Rs.500/- and rigorous imprisonment for seven years with fine of Rs.500/- respectively with default stipulations.
2. The facts of the prosecution case in brief are that prosecutrix (PW2) left her house on 27.3.1999 for bringing water but she did not return. After some search, a missing report was lodged by Ramrekha

(PW1) in Police Station Manendragarh. Search of the prosecutrix was conducted and she was recovered from the company of the Appellant on 6.4.1999 vide Exhibit P/12. On the same day, on the basis of enquiry conducted on missing report, First Information Report (Exhibit P/11) was lodged in the Police Station Manendragarh registering offence under Sections 363, 366 and 376 IPC.

3. The prosecutrix was medically examined by Dr. (Smt.) N. Yadav Rohan (PW9) and she submitted her report vide Exhibit P/7. Slides prepared during examination were seized vide Exhibit P/2. Clothes of the prosecutrix suspected of having stains of sperms were seized vide Exhibit P/3. Accused was also medically examined vide Exhibit P/4 by Dr. R.S. Bhojak (PW5). Undergarments of the Appellant were preserved and handed over to the police for chemical examination. Petticoat of the prosecutrix was seized and examined by Dr. (Smt.) N. Yadav Rohan (PW9) and vide report (Exhibit P/18) she advised for chemical analysis. Articles were sent for chemical examination but no report was obtained. For proof of age, one mark-sheet of the prosecutrix was seized vide Exhibit P/13. Investigation was conducted and on completion of the investigation, the Appellant was charge sheeted.

4. The Appellant was charged under Sections 363, 366 and 376 IPC by the trial Court. He denied commission of offence. The Prosecution examined as many as eleven witnesses. On examination under Section 313 CrPC, the Appellant denied all the incriminating evidence against him, pleaded innocence and false implication. He has stated in

defence that on the of date of incident, in the same night, he was assaulted by his father and uncle of the prosecutrix and four other persons. He was taken to the police station in injured condition where he lodged a report. Thereafter, he was admitted in hospital for treatment. He also alleged that a false report has been lodged against him. Father of the prosecutrix has constructed house on his land and this was the reason for falsely implicating him. Impugned judgment was passed by the trial Court by which the Appellant has been convicted and sentenced as aforesaid.

5. The appeal has been preferred while Appellant was in jail. It is submitted on behalf of the Appellant that the conviction and sentence of the Appellant is bad in law and against the facts and circumstances of the case. The statements of prosecution witnesses do not inspire confidence. Statement of the prosecutrix (PW2) is full of contradictions and omissions. Ramrekha (PW1) has admitted about the fact of enmity with the Appellant. Further, there is no evidence of rape. The medical evidence clearly demonstrates that the prosecutrix was not subjected to any sexual intercourse. There is no report of FSL. Hence, it is clear that Appellant has been falsely implicated because of the land dispute between him and father of the prosecutrix. It is argued that today, the age of the Appellant is about 68-70 years. Learned counsel for the appellant prayed for acquittal of the Appellant.

6. Learned Counsel for the State has opposed the arguments advanced on behalf of Learned Counsel for the Appellant and submits that it is clearly established by the prosecution that prosecutrix (PW2)

was minor on the date of incident. Narbada Sharan Singh Rajput (PW10) has proved from the register of Government Primary School that the date of birth of the prosecutrix was 5.1.1987, according to which, her age on the date of incident was just over 12 years. Prosecutrix (PW2) has made a clear statement about her abduction and rape committed with her. Other witnesses of the prosecution also supported the case of the prosecution. Therefore, there is no scope for interference in the impugned judgment.

7. Considering the arguments advanced by both the sides, the question which arises in this appeal is whether the conviction against the Appellant is supported by the evidence of the prosecution beyond reasonable doubt. The evidence before the trial Court is perused.

8. Prosecutrix (PW2) has stated that on the date of incident, when she was alone at her residence, the Appellant came and called her. When she went near the Appellant, he pushed her into the room of the house of Puran and locked the door. Next day, she was taken by mother and brother of the Appellant to Bhalatola where she was kept into the house of Sudhakar, brother of the Appellant for 2-3 days. Thereafter, she was taken to Jhariatola. While staying at Jhariatola, she was raped by the Appellant. She was brought to Police Station Manendragarh by Motilal (PW4). She has stated that the Appellant told her that he will keep her as his wife. In cross-examination, she admitted that when she went near the Appellant, they went to the house of Puran. Puran, his wife, his younger daughter, his younger son and others were present at that time. When she was pushed and

locked in a room, she raised alarm but nobody came for her rescue. She further submitted that while staying in three different villages as named by her, she used to go to answer the call of nature in open fields. She admitted that the Appellant was admitted in hospital at Manendragarh and had injuries on his body. She denied that her father assaulted and caused injuries to the Appellant. She has also denied that a false report has been lodged against the Appellant for the purpose that he should not be compelled to vacate the land encroached by him. She has also denied other suggestions given in defence.

9. Ramrekha (PW1) is father of the prosecutrix. He has stated about the prosecutrix gone missing and lodging of missing information in police station. After 10-11 days, he saw his daughter in the Police Station Manendragarh. He was told that prosecutrix and Appellant were brought from Jhariatola. He was told about the incident by the prosecutrix. In cross-examination, he has denied that his daughter went missing on Saturday and he assaulted the Appellant on Sunday. Though he admits that he was arrested by the police on the basis of the report lodged by the Appellant, he has denied all the adverse suggestions given in defence.

10. Jagotia Bai (PW3) is the mother of the prosecutrix. She has stated about missing of the prosecutrix and then her recovery. In cross-examination, she admitted that her daughter went missing on Saturday and Appellant came to village on Monday when he was caught by the villagers. This statement does not lead to any other

inference.

11. Motilal (PW4) has stated that after the missing of prosecutrix, he saw Appellant in Shankarpur. Appellant was taken to Sarpanch-Shivcharan and Manohar where he told that prosecutrix is residing in the house of a Gond in Jhariatola. In cross-examination, he has denied about any incident of assault by father of the prosecutrix to the Appellant. Shivcharan Singh (PW6) has stated that in his presence police officer told Motilal (PW4) to search for the Appellant and prosecutrix. Three days later, Motilal (PW4) brought the Appellant and prosecutrix in police station. This statement has unrebutted in cross-examination. Ramniwas Dubey (PW7), Head Constable, has stated about recording of missing report (Exhibit P/1). Devsingh (PW8) has stated about the injury on the head of the Appellant. He has not supported the case of the prosecution and declared hostile.

12. Dr. (Smt.) N. Yadav Rohan (PW9) has stated that she examined the prosecutrix (PW2) and found no injury on her body. On examination of internal organ, she found that her hymen was intact and one finger could be inserted with difficulty and she also could not found any injury on her private part. Vide report Exhibit P/7, she stated that no opinion can be given regarding sexual intercourse. In cross-examination, she has admitted that no signs of use of external force was found on the body of the prosecutrix. She also admitted that there was no possibility of sexual intercourse.

13. On perusing, analyzing and scrutinizing the evidence of these witnesses, there seems to be no evidence present in this aspect that

prosecutrix was forcefully taken and kept in confinement by the Appellant as well as the evidence regarding rape as stated by the prosecutrix is not corroborated by the medical evidence. It is the fact that prosecutrix went missing from 27.3.1999 and she was recovered on 6.4.1999 when she was in the company of the Appellant.

14. Age of the prosecutrix is material in this case. Narbada Sharan Singh Rajput (PW10), Head Master has stated on the basis of the admission register of Government Primary School (Exhibit P/9) that date of birth of the prosecutrix entered into the register was 5.1.1987. In cross-examination, he has admitted that usually on the basis of information given by the guardian, date of birth of child is entered into the register. This admission by him does not by itself falsifies the entry in the school admission register. Ramrekha (PW1), father of the prosecutrix has stated that she was aged about 12-13 years. Prosecutrix (PW2) has herself not stated about her age but the assessment before the Court regarding her age had been that she was 12 years old. Prosecution has thus proved this point accordingly. Defence has made no effort to prove the contrary. Hence, the proof of age as brought by the prosecution is sufficient and acceptable and on the basis of which, the finding given by the trial Court that prosecutrix was minor on the date of incident appears to be correct finding.

15. Next submission on behalf of the Appellant is that the prosecutrix has willingly accompanied the Appellant as per her statement and during the period of 10-11 days, she resided in three different villages. She had ample opportunity to raise alarm, to inform any person about

her plight, even then she has not done anything in this manner which suggests that she willfully followed and accompanied the Appellant. This argument cannot be entertained specifically when it is proved that age of the prosecutrix was 12-13 years on the date of incident. Hence, her willingness is of no consequence.

16. Considering the evidence of the prosecutrix with respect to rape not being corroborated by the medical evidence and the admission of prosecution witnesses regarding some enmity or strained relations between the Appellant and Ramrekha (PW1), father of the prosecutrix (PW2), it may be so that while reporting the incident and recording statements, the matter was extended to the extreme by alleging that Appellant had committed rape with the prosecutrix.

17. For these reasons, the statement of the prosecutrix with respect to allegation of rape against the Appellant is not found substantiated with sufficient proof beyond reasonable doubt. On the basis of this finding, it is held that the conviction and sentence of the Appellant under Section 376 IPC is not based on legally admissible evidence. The admissible evidence as found after analyzing the prosecution evidence is only that the prosecutrix was abducted from lawful guardianship when she was in guardianship of his father, Ramrekha (PW1). However, this finding is not sufficient to sustain the conviction under Section 366 IPC as well.

18. Section 366 IPC provides that abduction of any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she

may be forced or seduced to illicit intercourse. That is the requirement of proof under Section 366 IPC. In the present case, prosecutrix (PW2) has in her examination-in-chief not stated initially why she was forced and locked in a room by the Appellant but she has stated that Appellant used to say that he will take her as his wife. On the other hand, she has also stated that she does not know why Appellant abducted her. A simple statement by the Appellant that he wanted to take the prosecutrix as his wife is not compared with the requirement under Section 366 IPC where it has to be established that there should be intent to compel or marry any person against her will or she may be forced or seduced to illicit intercourse, etc. The offence under Section 366 IPC is also not made out on the basis of the evidence of the prosecution before the trial Court.

19. After due consideration of the submissions advanced on behalf of the parties and the entire material on record and the findings arrived at in this appeal, the appeal is partly allowed. Conviction and sentence of the Appellant under Sections 366 and 376 IPC are set aside. However, the conviction of Appellant under Section 363 is maintained and upheld.

20. It is submitted on behalf of the Appellant that now, the age of the Appellant is more than 68 years. He was arrested on 7.4.1999 and has been released on bail by this Court i.e. 21.3.2001. Therefore, he was in jail for a total period of one year, eleven months and fifteen days. It is prayed that looking to the facts and circumstances of the case, sentence under Section 363 IPC may be modified and the Appellant

may be sentenced to the period of imprisonment already undergone by him.

21. Considering all the facts and circumstances of the case and the argument advanced on behalf of the Learned Counsel for the Appellant, the prayer made in this behalf deserves to be and is hereby allowed. Hence, the sentence imposed upon the Appellant under Section 363 IPC is set aside and instead thereof it is ordered that the Appellant is sentenced for the period of imprisonment already undergone by him during trial and pendency of this appeal. The Appellant is on bail and he need not surrender. However, his bail bonds shall remain effective for a period of six months under the provisions of Section 437-A CrPC.

Sd/-
(Rajendra Chandra Singh Samant)
Judge