

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.204 of 2002

Chandrashekhar, S/o Shiv Kumar Chandrakar, aged about 38 years, R/o
Gayanagar, District Durg, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Durg, District Durg,
Chhattisgarh

--- Respondent

and

Criminal Appeal No.268 of 2002

1. Toran Singh, S/o Sukhadeo Prasad Tamrakar, aged about 34 years,
2. Rajesh Dubey, S/o Shyama Prasad Dubey, aged about 26 years – **DEAD**
Both are residents of Gaya Nagar, District Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Durg, District Durg,
Chhattisgarh

-- Respondent

For Appellants in both the appeals	:	Shri Praveen Dhurandhar, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

28.11.2017

1. This judgment shall govern the disposal of both the above mentioned appeals as they arise out of a common judgment.
2. Both the appeals have been preferred against the judgment dated 14.2.2002 passed in Sessions Trial No.226 of 1997 by the Sessions Judge, Durg convicting and sentencing all the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 2 years with fine of Rs.500/- with default stipulation

3. During pendency of connected Criminal Appeal No.268 of 2002, Appellant No.2, Rajesh Dubey died and, therefore, vide order of this Court dated 10.9.2014, his appeal has been abated.
4. Case of the prosecution, in brief, is that Appellant Toran and Complainant Pramila (PW2) were engaged in the same profession of shooting short films. It is alleged that on 7.10.1996, Appellant Toran came to the house of Complainant Pramila and asked her to follow him for appearing in an interview to be held at Doordarshan Centre, Raipur. First, he took her to Ira Film Studio, Durg where other Appellants Chandrashekhar and Rajesh Dubey (Dead) were waiting for them. There she came to know that no film was to be shot and she was brought there to marry Appellant Toran. It is further alleged that at Ira Film Studio, Durg, all the Appellants put garland of flowers in the neck of Pramila with an intent to perform her marriage with Appellant Toran. On being refused by Pramila, all the Appellants abused her and took her inside a room. In the room, Appellant Toran forcibly laced her neck with a *Mangalsutra* and also placed vermilion on her head. Thereafter, all the Appellants took her to a hotel and thereafter they left her near her house. She told her brother Krishna (PW3) about the incident and thereafter she lodged First Information Report (Ex.P4). On completion of the investigation, a charge-sheet was filed against the Appellants for offences punishable under Sections 363, 366, 342, 294 and 506B of the Indian Penal Code. Charges were framed against them under Sections 366, 342 and 323 of the Indian Penal Code.
5. In support of its case, the prosecution examined as many as 5 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied

the circumstances appearing against them, pleaded innocence and false implication. In their defence, 3 witnesses have been examined.

6. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, these appeals.
7. Learned Counsel appearing for the Appellants submitted that Complainant Pramila had left her house for the purpose of carrying out her routine work. In her Court statement, she has stated that she was unconscious and when she became conscious she noticed that her neck was laced with a *Mangalsutra* and vermilion was also placed on her head. There is nothing on record which could show that the act done with Pramila was done by the Appellants. It was further argued that there was love affair between Pramila and Appellant Toran and they also wanted to marry each other, but the family members of Pramila did not agree for their marriage. Therefore, the Appellants have been falsely implicated in the case. It was also argued that there are material contradictions and omissions in the statements of the prosecution witnesses.
8. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
9. I have heard Learned Counsel appearing for the parties and perused the record with due care.
10. Y.S. Mishra (PW1) is the witness who recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. Krishna (PW3) is brother of Complainant Pramila. Dr. A.S. Gupta (PW4) medically examined Pramila and gave his report (Ex.P5). Ex.P5 states that there was one abrasion measuring 1" x ½" on left

lower orbital margin. Ram Gyan (PW5) is the witness who recorded the FIR (Ex.P4).

11. Case of the prosecution is based on the testimony of Complainant Pramila (PW2) and her brother Krishna (PW3).
12. Pramila (PW2) has stated that she and Appellant Toran were working in Ira Film Studio at Durg. On the date of incident, Appellant Toran came to her house and informed her that an interview was to be held at Doordarshan Centre, Raipur and, therefore, both of them had to go there. She has further stated that she went along with Appellant Toran to Ira Film Studio, Durg in a car. There, Appellant Toran told her that both of them had to go to the shooting spot, therefore, she should change her saree. She changed her saree. Thereafter, both of them reached to the shooting spot. Other two Appellants were already present there. There, she came to know from the Appellants that her marriage was to be performed there. She has further stated that she wanted to run away from there, but all the Appellants caught her, assaulted her with fists and hands and took her inside a room. There, she fell unconscious. After an hour, she became conscious. Then she saw that vermilion was placed on her head and her neck was also laced with a *Mangalsutra*. The Appellants were also present inside the room. She has further stated that the Appellants threatened her and caused her to stay inside the room for hours. Thereafter, they took her to Hotel Greenland in a Tempo and fed her food there. Thereafter, they took her to the house of Appellant Toran and left her there. Thereafter, she lodged the FIR (Ex.P4). In her cross-examination, she has admitted that she did not know who laced her neck with the *Mangalsutra* and placed vermilion on her head. She has further admitted that when she went her home, her neck was not laced with

the *Mangalsutra* because she had already removed the same and given to the Appellants. She has further stated that she had also washed the vermilion placed on her head at the spot.

13. Krishna (PW3) has stated that Pramila returned home at about 6:00 p.m. and told him that the Appellants had taken her to Ira Film Studio at Durg, assaulted her and her neck was laced with a *Mangalsutra* and vermilion was also placed on her head forcibly. In his cross-examination, he has stated that Pramila had told him that Appellant Toran had placed vermilion on her head and laced her neck with a *Mangalsutra*.
14. On minute examination of the statements of the above witnesses, it reveals that the Appellants and Complainant were engaged in the same profession and they were already acquainted with each other. It also reveals that Appellant Toran had taken Pramila to Ira Film Studio at Durg and there all the Appellants had kept Pramila inside a room for hours. Pramila has not stated about the person who laced her neck with the *Mangalsutra* and placed vermilion on her head. She has also not stated that she was stopped or forced by the Appellants to perform marriage with Appellant Toran. In such circumstances, even when the evidence adduced by the prosecution is accepted at its face value, no case under Section 366 of the Indian Penal Code is made out against the Appellants. Instead, the offence committed by the Appellants falls under Section 342 of the Indian Penal Code. Therefore, the conviction and sentence imposed upon Appellants Toran and Chandrashekhar under Section 366 of the Indian Penal Code are set aside and instead they are convicted under Section 342 of the Indian Penal Code.
15. So far as sentence part is concerned, Appellant Toran has already undergone about 2 months and Appellant Chandrashekhar has

already undergone about 1 month. Taking into consideration the facts and circumstances of the case, I am of the view that sentencing both the Appellants with the period already undergone by them and imposing a fine of Rs.500/- upon each of them would serve the interest of justice. Ordered accordingly. The fine shall be payable within a period of one month from the date of receipt of a copy of this judgment. In default of payment, the Appellants shall be liable to undergo simple imprisonment for 1 month. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed today.

16. Consequently, both the appeals are allowed in part to the extent indicated above.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.
18. A copy of this judgment be placed on the record of connected Criminal Appeal No.268 of 2002.

Sd/-
(Arvind Singh Chandel)
Judge