

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 378 of 2007

1. Ramdas S/o Sufal Das, aged about 38 years,
2. Hari Das S/o Dayadas, aged about 45 years,
3. Arjun Das S/o Sufal Das, aged about 56 years,

All R/o Banki Mongra, Tahsil Katghora, Distt. Korba (C.G.)

---- Applicants

Versus

- State of Chhattisgarh, Through : Police Station Kotwali Korba, District Korba (C.G.)

---- Respondent

For Applicants :	Shri B.L. Sahu, Advocate
For Respondent/State :	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

17/01/2017

1. This revision is directed against the judgment of Sessions Judge, Korba in Criminal Appeal No. 12/2007 passed on 20/07/2007, by which the judgment of trial court in Criminal Case No. 326/2006 dated 08/05/2007 was confirmed with respect to the applicants.

2. The prosecution case is this, that Shyambai (PW-1) along with her daughter Nonibai (PW-2) had gone to market in Korba on 11/05/1986. Both were returning to their village in the evening between 4 to 4.30 p.m. accompanied with Mangal Singh and Pritam Das (PW-3). They arrived near Barkutabhatha when applicants Ramdas, Haridas,

Arjundas and acquitted accused Govind Das came on the spot. They forcefully abducted Noni Bai (PW-2) gave threatening that if any of them raises alarm, then he will be killed. Shyambai (PW-1) lodged FIR Ex.P/1 with Police Station, Korba on 12/05/1986 against the applicants and accused Govind Das. On the same day applicant Ramdas was apprehended and interrogated. On his instance vide memorandum Ex.P/3 Noni Bai (PW-2) was recovered from the residence of accused Govind Das on the same day, vide recovery memo Ex.P/2. After completion of investigation applicants and accused Govind Das were prosecuted.

3. Trial Court, the Court of Judicial Magistrate First Class, Korba charged the applicants and accused Govind Das under Section 363/34, 368/34 and 506 B of IPC. On denial of charges by them, trial was conducted by the trial Court. After affording opportunity to prosecution and defence and on conclusion of trial, judgment dated 08/05/2007 was passed by the trial Court in which applicants and accused Govind Das were convicted under Section 363/34 of IPC and sentenced with RI for 2 years and fine of Rs. 100/- each, under Section 368/34 of IPC and sentenced with RI for two year and fine of Rs. 100/- each and under Section 506(B) of IPC and sentenced them with RI for one year with fine of Rs.100/- with default stipulations. Applicants and accused Govind Das challenged this judgment before Sessions Court, Korba. Appeal was heard and decided by the Sessions Judge by judgment dated 20/07/2007 in which the judgment of conviction and sentence against applicant by trial Court was confirmed, but the conviction and sentence against accused Govind Das was set-aside.

4. The grounds in revision are these, that trial Court has passed the judgment of conviction and sentence against the applicants erroneously, there had been no evidence of prosecution to hold conviction against the applicants. Prosecution has failed to prove that the age of prosecutrix Noni Bai (PW-2) had been below 18 years on the relevant date. There is no evidence that prosecutrix was forcefully abducted by the applicants. Noni Bai (PW-2) had willingly gone with applicants to their place of residence. The Investigating Officer in this case was not examined, under these circumstances applicants had been entitled for benefit of doubt. On the basis of same set of evidence, accused Govind Das has been acquitted by the lower appellate Court. The case of applicants is no different from that of co-accused Govind Das, hence applicants should also be acquitted.

5. State counsel has opposed the prayer of the applicants.

6. Considering the material on record and the arguments submitted from both the sides the question in this revision is, whether the conviction against the applicants is supported by evidence of prosecution beyond all reasonable doubt?

7. Shyambai (PW-1) has stated that on the date of incident she along with her daughter Noni Bai was returning from the market at Korba to her village. She arrived near Barkutabhatha when applicants all of sudden came in front of them. Applicant Ramdas caught hold of Noni Bai (PW-2), she raised alarm on which Ramdas pushed her, due to which she fell down, then applicants took Noni Bai with them. The age of Noni Bai (PW-2) between 13-14 years. She has stated about

lodging report Ex.P/1. In cross-examination she has admitted that she came to be acquainted with applicants from the date of incident and later on she came to know their names as well. Her statement about the incident in which Noni Bai (PW-2) was forcefully taken and abducted by applicants has not been rebutted. In cross-examination she has further admitted that she did not want to marry her daughter with applicant Ramdas. This admission indicates that there had been some reason behind, that applicant Ramdas wanted to marry Noni Bai (PW-2) and mother of Noni Bai had no willingness for this relation. Further there is admission that she called a meeting in the village where she was advised by villagers that she should lodge a report, then she did accordingly. She has denied that the age of prosecutrix on the date of incident was between 20 to 21 years. She has further denied all adverse suggestion by the defence.

8. Noni Bai (PW-2) has stated similarly and supported the version of Shyambai (PW-1). Further she has stated that after her being abducted she was requesting the applicants that she wants to go home which was denied by them. In cross-examination her statement has remained un-rebutted. There is no statement in her whole deposition to demonstrate that she went with applicants on her own willingness. Pritamdas (PW-3) has also supported the version of prosecution and his statement has remained un-rebutted in cross-examination.

9. Daduram (PW-4) and Ramlal (PW-5) are the witnesses of memorandum Ex.P/3 and recovery memo Ex.P/2 both have not supported the case of prosecution and Investigating Officer conducting

this part of investigation has not been examined. Anyhow lack of evidence regarding memorandum of applicant Ramdas and the recovery made vide Ex.P/2 from the residence of accused Govind Das does not affect the statement of witnesses who have given eyewitness account before the Court, even though the Investigation Officer has not been examined. The evidence of witnesses Shyambai (PW-1), Noni Bai (PW-2) and Pritamdas (PW-3) are un-rebutted and inspire confidence which is sufficient to establish that on the date and time of incident applicants forcefully abducted Noni Bai (PW-2) with them and kept her under restraint till her recovery on 12/05/1986.

10. Age of prosecutrix is important for the finding of abduction from legal guardianship. Shyambai (PW-1) has stated in examination-in-chief the age of her daughter Noni Bai 13 - 14 years at the time of abduction. She has remained consistent in her cross-examination. Noni Bai (PW-2) has not made any statement about her age at the time of incident. Although there had been investigation regarding age of prosecutrix, but the documents regarding the proof of age of the prosecutrix have not been exhibited by the prosecution itself neither defence has taken care of. Further challenging the statement of Shyambai (PW-1) that the age of prosecutrix was 13 - 14 years at the time of incident, no evidence has been led by the defence before the trial court. Under these circumstance, even though the statement of Shyambai (PW-1) is the only statement regarding the age, it being un-rebutted has to be believed. Apart from that there is no admission of Noni Bai (PW-2) in her deposition that she had gone with the applicants on her own will. Hence there had been evidence of abduction and wrongful confinement

of prosecutrix Noni Bai (PW-2) in this incident. For these reasons, the finding of the trial Court about conviction against the applicants and the judgment of lower appellate Court confirming this conviction is proper, which needs no interference.

11. It is submitted by counsel for applicants that the case is 31 years old, all the applicants are now senior citizens. A compromise has been arrived at out of the Court, by applicants and complainant Shyambai and Sadhmati @ Noni Bai and both the parties having cordial relationship at present. An application has been filed before this Court for taking documents of compromise on record. Such documents cannot be entertained in this revision petition but the fact as stated about the cordial relationship between the parties shall be noticed by this Court. It is also submitted that the applicants have undergone custody of 206 days on various occasions up till now. Hence looking to the circumstances at present the sentence awarded to the applicants may be modified to the period of custody already undergone by them.

12. Section 363 of IPC provides for sentence of imprisonment of either description for a term which may extend to 7 years with fine, Section 368 of IPC does not separately provide for sentence but for this offence the punishment provided for main offence is applicable. Hence, for the conviction against applicants there is no minimum sentence provided due to which reduction of sentence is worth consideration. Looking to all the facts and circumstances at present, it is found suitable that the sentence awarded to the applicants should be modified. Hence, this revision petition is allowed in part. Upholding the

conviction of applicants under Section 363 and 368/34 of IPC, the sentence of imprisonment awarded by the trial Court and confirmed by lower appellate Court is hereby set-aside. In stead of that applicants are sentenced with imprisonment of period of custody already undergone by them during trial appeal and revision before this Court. The sentence of fine against the applicants as ordered by the trial Court and affirmed by the lower appellate Court is confirmed. This revision petition is disposed of accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE