

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1052 of 2007**

1. Shakeel Ahmad son of Mohammad Ibrahim aged about 36 years,
2. Chhotu alias Asafak Ahamad son of Mohammad Ibrahim aged about 28 years,
Both residents of Maszid para Kota, PS Kota, District Bilaspur (CG)
3. Javed Meman son of Mohammad Bilal Meman aged 23 years R/o Near Punjab Gurudwara Naharpara Raipur District Raipur (CG)
4. Jaipal son of Savant Ram Netam aged about 22 years, R/o Piparkhuti, PS Kota, District Bilaspur (CG)

---- Appellants**Versus**

State of Chhattisgarh Through: Police Station Ratanpur, District Bilaspur (CG)

---- Respondent

For Appellants	: Smt. Hamida Siddique, Advocate
For Respondent/State	: Shri Anil Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****31.10.2017**

1. This appeal is directed against the judgment of conviction and order of sentence dated 23rd October, 2007, passed by the Third Additional Sessions Judge, Bilaspur in Sessions Trial No. 136 of 2007, convicting the accused/appellants under Sections 367 and 323 read with Section 34 IPC and sentencing them to undergo R.I. for 5 years and fine of Rs. 5,000/-, in default of payment of fine to

further undergo R.I. for 3 months; and R.I. for 1 year with a direction to run the sentences concurrently.

2. In the present case, name of the complainant/victim is Kamlesh Rajak (PW1). He was earlier working in one International Dhaba (food providing hotel), but he was not satisfied with the payment and left the said Dhaba and thereafter, started working in one Santosh Dhaba. On 1.5.2007 at about 9.00 pm, the accused/appellants along with other co-accused persons, came on one Maruti Esteem Car and Pulsar motorcycle at Santosh Dhaba where the complainant was working and they pressurized him to go with them and work in International Dhaba. When the complainant refused to go with them to work in the said Dhaba, the accused/appellants beaten him with fists and kicks and forcibly dragged and put him into the said Car and took him to International Dhaba. After reaching to the said Dhaba, the accused/appellants and other co-accused tied hands and legs of the complainant and told him that he has to work as a slave in their hotel. The complainant anyhow freed himself and run to village Jali, and thereafter, lodged report at Police Station Ratanpur Ex. P/1 on 1.5.2007. After registration of FIR, he was sent for medical examination. During investigation, the vehicles were seized from the accused/appellants and other co-accused persons and after completion of investigation, charge sheet was filed. The accused/appellant denied the charge, pleaded innocence and false implication. Trial was conducted and after completion of trial, the accused/appellants were convicted and sentenced as above.

3. Learned counsel appearing for the accused/appellants submits as under:

- (i) That version of complainant Kamlesh Rajak (PW1) is not corroborated by the independent witnesses and version of the complainant is cooked up against the accused/appellants and the same is not reliable.
- (ii) That statements of Laxmi Kumar Kenwat (PW2), Raju Singh ((PW3) and Jagdeo Singh (PW4) are not reliable and their version is exaggerated as they have deposed due to business rivalry between the accused/appellants and these witnesses.
- (iii) That from the evidence, offence under Section 367 IPC is not made out and the conviction is not sustainable.

4. *Per contra*, learned State counsel supporting the impugned judgment has submitted that conviction of the appellants is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Kamlesh Rajak (PW1) has deposed that he had earlier worked in International Dhaba and after leaving work from the said Dhaba, he is now working with one Santosh Dhaba. He further deposed that on the date of incident at about 8.00 -9.00 am, he was working in Santosh Dhaba and at the same time, the

accused/appellants came on a motorcycle and the other co-accused persons namely Chhotu, Javed and Jaipal came there on one white Maruti Esteem Car and started beating him with stick and by force they compelled him and thereafter, forcefully put him in the car. Thereafter, the accused/appellants said the complainant that he has to work in International Dhaba as a slave. After reaching to International Dhaba the accused/ appellants threatened him not to move from the said Dhaba and work as a slave. He further deposed that he reported the matter to Police Station Ratanpur and thereafter, the Police officers investigated the matter. Version of this witness is supported by the version of Laxmi Kumar Kenwat(PW3) and Jagdeo Singh(PW4). These witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the accused/appellants. Again version of this witness is supported by the version of Dr. N.K. Samdariya (PW7), who deposed that on examination of Kamlesh Rajak(PW1) on 1.5.2007, he noticed swelling measuring 2 ½" x 2" in left part of his chest and swelling measuring 3" x 2½" on right palm and bruise measuring 5" x 1" on right thigh. As per version of this witness, the injuries were caused since 24 hours of the examination. Version of ocular and medical evidence is supported by the version of Aashish Vasnik(PW9) who was the Station House Officer at the relevant time and conducted investigation in the case. The prosecution is under obligation to prove that the complainant was abducted in order to dispose him for slavery to establish the charge under Section 367 IPC. From the direct evidence it is established that the accused/appellants compelled the complainant to go from Santosh

Dhaba to International Dhaba and again they have pressurized him to work in the said Dhaba as a slave. Direct evidence of the witnesses is unshaken and there is nothing on record to say that the witnesses have any grudge against the accused/appellants to rope them in a false charge. There is no force in the statement of learned counsel for the appellants that version of prosecution witnesses is contradictory. From the statement of all the witnesses it is established that it were the accused/appellants who forced the complainant to go with them and work as a slave.

7. It is true that minor contradictions may be there in the statements of the witnesses, but the same is bound to occur because all the statements were recorded after a lapse of time and their version is subject to memory and same is not equivalent to tape recording.

8. FIR has been promptly lodged, in which, names of the accused/appellants are mentioned and version of the witnesses is stable right from investigation to the statements before the Court. It is the basic principle of the criminal jurisprudence that quality of the evidence has to be weighed. In the present case, when the witnesses are stable right from the day of offence to the statements before the Court and there is nothing on record to discard their testimony, the same can be acted upon and inspires confidence. Abduction to dispose the complainant for slavery is established by the evidence and same is an offence under Section 367 IPC for which the trial Court has convicted and sentenced the accused/appellants and the same is not liable to be interfered with

invoking jurisdiction of appeal and the same is affirmed and the arguments advanced on behalf of the accused/ appellants is not sustainable. The finding of the trial Court is based on the established facts. Accordingly, the conviction of the appellants is hereby affirmed.

9. Heard on the point of sentence.

10. The trial Court has awarded the sentence prescribed for the said offence under Sections 367, 323 r/w Section 34 IPC, which is R.I. for 5 years and R.I. for 1 year and the same appears to be the appropriate sentence looking the act of the accused/appellants and the same is affirmed.

11. For the foregoing reasons, the appeal is liable to be and is hereby dismissed. The appellants are reported to be on bail. Their bail bonds shall stand cancelled. The trial Court is directed to issue a non-bailable warrant of arrest after ascertaining the sentence is remained, against the appellants and after their arrest, they be sent to jail for serving the remaining part of the jail sentence.

Sd/-
(Ram Prasanna Sharma)
JUDGE