

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 921 of 2002

Dilfared S/o. Mariyanus Toppo, Aged about 22 years, Occupation Agriculture, R/o. Village Bishunpur, Ambikapur, District Surguja (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Ambikapur, District Ambikapur (C.G.)

---- Respondent

For Appellant : None for the Appellant.

For Respondent : Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

04.05.2018

1. This appeal is preferred by appellant Dilfared against the judgment of conviction and order of sentence dated 29.08.2002 passed by the Illrd Additional Sessions Judge, Ambikapur, Session Division Surguja (C.G.) in Sessions Trial No. 4/2001, wherein the said Court convicted the accused/appellant under Section 368 of the IPC, 1860 and sentenced him to undergo R.I. for 4 years.

2. In the present case, the prosecutrix is (PW-1). As per version of the prosecutrix, one Manoj kidnapped her on 27.11.2000 at about 1.00 PM and kept her in village Bishunpur in the house of the appellant.

3. In order to prove the charge under Section 368 of the IPC, the prosecution has to establish that the appellant was knowing that the prosecutrix has been kidnapped or has been abducted and knowingly concealed or confined the prosecutrix at his home.

4. To substantiate the charge prosecution has examined 10 witnesses. To nullify the charge the defence side examined five witnesses. But for the statement of prosecutrix (PW-1) no one deposed anything regarding the present appellant.

5. As per version of the prosecutrix (PW-1) one Manoj kidnapped her and she was travelling with Manoj to various places namely Ambikapur, Kusmi, Khatanga and Bishunpur. She deposed that Manoj stayed at the house of present appellant with her. She further deposed that she was searched from the house of the present appellant, but, it is not clear from her evidence as to whether the present appellant was aware of the fact that the prosecutrix is kidnapped by one Manoj or even he knows regarding the guardianship of the prosecutrix. Evidence of kidnapping is established through the evidence of minority of the prosecutrix (PW-1) and her guardianship.

6. In the present case, the prosecution has not adduced any evidence that the appellant had knowledge regarding minority and guardianship of the prosecutrix (PW-1) and unless the same is not proved by any cogent evidence, it cannot be inferred that appellant had knowledge regarding kidnapping of the prosecutrix. True, it is that the prosecutrix stayed in the house of the appellant with one Manoj but she had no conversation with the present appellant and how Manoj stayed in the house of the present appellant is not clear

therefore, it can be inferred that Manoj and the present appellant have tuning to allow to stay in his house but it is not the case of the prosecution that she knows the appellant prior to the staying in his house, therefore, it is difficult to hold that appellant willfully kidnapped or concealed her in the house of the present appellant. There is no evidence that the appellant concealed or confined the prosecutrix. The prosecutrix reached to the house of the appellant with Manoj, therefore, at the best it can be said that Manoj has played active role in staying in the house of the appellant but no role of the present appellant is established regarding concealing or confining the prosecutrix.

7. For the foregoing, I am of the considered opinion that the finding arrived at by the trial Court is not sustainable and the same is set aside. The appellant is acquitted of the charge under Section 368 of the IPC. Accordingly, the appeal is allowed. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE