

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 2445 of 1999**

1. Medini Prasad S/o Shambhu Prasad Badhgaiya aged about 29 years, R/o Village Bhaskura, Thana Marwaha, District Bilaspur, MP (Now CG)
2. Amritlal S/o Pirsingh Yadav, aged about 28 years, R/o Village Bhaskura, Thana Marwaha, District Bilaspur, MP (Now CG)
3. Phulbai, Wd/o Shyamlal Panika, aged about 56 years, R/o Village Belgahna, Thana Kota, District Bilaspur, MP (Now CG)
4. Narbadiya Bai, Wd/o Nanku, aged about 53 years, R/o village Lalpur, Thana Kota, District Bilaspur, MP (Now CG)
5. Suraj Kumar S/o Gayaram Yadav aged about 26 years R/o Village Bhaskura, Thana Marwaha, District Bilaspur, MP (Now CG)

**---- Appellants**

**Versus**

State of Madhya Pradesh (now CG) through Police Station, Kota, District Bilaspur, MP (Now CG)

**---- Respondent**

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| For Appellant No.1    | - | Shri Pankaj Agrawal, Advocate  |
| For Appellants 2 to 5 | - | Shri Ravindra Sharma, Advocate |
| For Respondent.       | - | Shri Avinash K. Mishra, PL     |

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**Hon'ble Shri Justice Pritinker Diwaker**

**Judgment on Board**

**07/02/2018**

This appeal is directed against the judgment and order dated 31.08.1999 passed by Special Judge (Atrocities), Bilaspur in Sessions Trial No. 187/1998 convicting the accused/appellants under Section 363/34 IPC and sentencing each of them to undergo

rigorous imprisonment for three years with fine of Rs. 300/-, plus default stipulations.

2. As per the case of prosecution, marriage of victim (PW-1) aged about 15-16 years was fixed with the absconding accused Bhola Nath who after engagement started living with her. However, 4-5 month thereafter it came to the knowledge of family members of Bhola Nath that the victim was not Brahmin by caste and therefore some dispute cropped up between the parties. On 9.4.1993 the present appellants helped the main accused Bhola Nath in eloping the victim but at Railway Station, Khongsara, the accused/appellants herein along with the victim were found whereas the main accused Bhola Nath fled away. Written report was lodged on 10.04.1993 by Maniram - the father of the victim, based on which FIR Ex.P-2 was registered against the appellants herein as also the main accused Bhola Nath for the offences punishable under Sections 363 and 366 IPC. After completion of investigation, charge sheet was filed by the police followed by framing of charge by the Court below under Sections 363/34 and 366/34 IPC.

3. So as to hold the accused/appellants guilty, prosecution has examined 06 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case. One Shiv Singh Dhurve has also been examined by the defence as DW-1.

4. After hearing the parties, the trial Court acquitted the accused/appellants of the charge u/s 366/34 but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submit that even if the entire case of the prosecution is taken as it is, offence under Section 363/34 IPC is not made out against the accused/appellants as its basic ingredients are completely missing. They further submit that the age of the victim has also not been proved by the prosecution in accordance with law. According to them, after the incident the victim married elsewhere and is living a happy married life and therefore after a considerable period of about 25 years, no useful purpose would be served in sending them to jail again. Counsel for the appellants submit that even the complainant Mani Ram could not be examined by the prosecution as he died during the trial itself.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants as shown above, are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Victim (PW-1) has stated that on the date of incident in the evening hours when she had gone to answer the call of nature, accused/appellants gagged her mouth and forcible took her near

the Railway track and on the point of knife they asked her to accompany them. She has stated that while lodging the report she informed the police about being taken away by the accused/appellants on the point of knife but if it is not written therein, she cannot tell the reason therefor. She has admitted that prior to the incident there was no dispute whatsoever with the accused/appellants. She however has admitted that the accused/appellants had not outraged her modesty. Champa Bai (PW-2) - mother of the victim has stated that after her daughter went missing, the report was lodged by her husband Mani Ram. She has stated that in the evening her younger daughter informed her that the victim had gone outside for answering the call of nature but did not return since then. Jagnandan (PW-3) - uncle of the victim has stated that when he returned from Belgahna, Mani Ram had disclosed about the victim being taken away by the people of Bhaskura. While searching, he along with others went to Khongsara Railway Station and found her in the company of the accused/appellants and main accused Bhola Nath. According to him, the victim had not disclosed anything to him. As regards age, he has stated that the age of the victim at the relevant time might have been 16-17 years. Dinesh Kumar Tiwari (PW-4) is the witness who along with others went in search of the victim to Belgahna from where he went to Khongsara and saw the victim boarding the train. Thereafter, according to this witness, the victim was brought to police station Belgahna. M.P. Mishra (PW-5) is the investigating officer who has duly supported the case of the prosecution. According to him, progress report was seized under Ex. P-4 in

which date of birth of the victim was recorded as 11.11.1978. I.N. Singh (PW-6) is the witness who assisted in the investigation. Shiv Singh Dhurve (DW-1) has disputed the progress report Ex. P-1.

9. Close scrutiny of the material available on record including the evidence of the witnesses in particular that of the victim (PW-1) does not make it clear that the accused/appellants kidnapped the victim from the lawful guardianship. On the contrary, record reveals that marriage of the victim was fixed with Bhola Nath (absconding accused) and therefore, the possibility of her accompanying the accused/appellants of her own cannot be ruled out. That apart, age of the victim has also not been proved by the prosecution in accordance with law as it has not bothered to establish as to on what basis the date of birth of the prosecutrix has been recorded as 11.11.1978 in Ex. P-4. None of the witnesses including the victim has disclosed her exact age at the time of incident. If evidence of the mother of the victim (PW-2) is referred to, age of the prosecutrix at the relevant time comes out to be in between 17 and 18 years. More importantly, the complainant Mani Ram who made the written report which was made basis for registration of FIR could also not be examined on account of his death during trial. In these circumstances when the prosecution could not substantiate its case beyond reasonable doubt, the accused/appellants must receive the benefit of the same.

10. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubt and so also the Court below has

gone wrong in appreciating the evidence collected by the prosecution while recording the finding of conviction and slapping the sentence on the accused/appellants. Appeal is therefore allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charge levelled against them. They are reported to be on bail and therefore, no order needs to be passed to set them free etc.

11. Appeal allowed.

Sd/-

**(Pritinker Diwaker)**

**Judge**