

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.943 of 2004

Laxmi Prasad, S/o Bandhuras, age 23 years, Occupation Labour, R/o Village Chindand, P.S. Baikunthpur, District Korea, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through Police Station Sonhat, District Korea, Chhattisgarh

--- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate
For Respondent	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

26.7.2018

1. This appeal is directed against the judgment dated 30.10.2004 passed by the Additional Sessions Judge, Baikunthpur (Korea) in Sessions Trial No.141 of 2004 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.1,000/- with default stipulation
Under Section 363 of the Indian Penal Code	No separate sentence has been imposed against the conviction under Section 363 of the Indian Penal Code

2. Prosecution case, in brief, is that the prosecutrix (PW4), a girl aged about 14 years, who was residing with her parents at Village

Katgodi, at the relevant time, was a student of 9th standard. It is alleged that on 20.1.2004, at about 12:00 noon, she came out of her school during lunch hours. The Appellant telling her that he will marry her asked her to sit on his scooter and took her away on the scooter. When Kalawati (PW2), mother of the prosecutrix reached the school, she did not find the prosecutrix there. On this, Krishna Kumar (PW8), brother of the prosecutrix told her that he had seen the prosecutrix going away with a person on a scooter. Kalawati (PW2) informed about the incident to her husband Omprakash (PW1). During search of the prosecutrix by Omprakash (PW1) and Santosh (PW3), the Appellant and the prosecutrix met them on the way near Shivghat going away on a scooter. On being tried to stop the scooter, the Appellant did not stop the scooter and ran away towards Baikunthpur. They chased the Appellant and the prosecutrix. They caught them at Kharwat Railway Crossing as at that time the railway crossing was closed. Both were taken back and the Appellant was handed over at the police station. First Information Report (Ex.P1) was lodged by Omprakash (PW1). Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 363 and 366 of the Indian Penal Code. Charges were framed against him under Sections 363 and 366 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 10 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. The Appellant has

examined himself as DW1 in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been falsely implicated in the case. He is innocent. He further submits that there was a love relation between the prosecutrix and the Appellant. The prosecutrix herself left her house and she herself went away along with the Appellant at her own will. The Appellant never asked her to come with him nor did he allure her that he will marry her and took her away with him. There is nothing on record on the basis of which the conviction could be imposed upon the Appellant. Therefore, he may be acquitted of the charges.
6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW4) has stated that on the date of incident, during lunch hours, at about 12:00 noon, she came out of her school. The Appellant came to her and told her that her father has met with an accident and he also told her that her father had called her. On this, she went along with the Appellant on his scooter.

She has further stated that at that time, the Appellant had not talked anything about their marriage. On going ahead, her father Omprakash (PW1) and Santosh (PW3) met on the way. They tried to stop the scooter of the Appellant, but he did not stop. At that time, the Appellant told her that he will marry her. She has further stated that when they reached at the Kharwat Railway Crossing, the railway crossing was closed. At that time, her father reached there and caught the Appellant and took them back. She has further stated that the Appellant was sitting in their shop from before, therefore, she was acquainted with him. During cross-examination, she has admitted that when the Appellant was taking her on his scooter, she had not raised any voice. In paragraph 4 of her cross-examination, she has stated that the Appellant had taken her away telling her that her father had met with an accident. She had stated this fact in her police statement. But, in her police statement (Ex.D7), this fact is not mentioned.

9. Krishna Kumar (PW8), brother of the prosecutrix has stated that his school and the school of the prosecutrix fell within the same campus and both were going together to their home for taking lunch. He has further stated that on the date of incident, the prosecutrix did not meet him. Then he told this fact to his mother Kalawati (PW2). But, Kalawati (PW2) has not deposed as stated by her son Krishna Kumar (PW8). As per her Court statement, when the prosecutrix did not return home during lunch hours, she went to her school to see her. When the prosecutrix was not found in the school, she was returning home. At that time, she saw on the way that the Appellant and the prosecutrix were going together towards Baikunthpur on a scooter. She has further stated that she

informed about this to her husband Omprakash (PW1). Thereafter, her husband and her *devar* (brother-in-law) went out to search the prosecutrix and in the evening they caught the Appellant and the prosecutrix and took them back.

10. Omprakash (PW1), father of the prosecutrix, Santosh (PW3) and Arvind (PW7) have stated that they had gone out to search the prosecutrix on a motorcycle. The Appellant and the prosecutrix were found at the Kharwat Railway Crossing on a scooter. At that time, the crossing was closed. They caught the Appellant and the prosecutrix and took them back.
11. Sub-Inspector R.D. Sodhi (PW5) has stated that he recorded the First Information Report (Ex.P1). Madanlal Rajwade (PW6) has proved the *Dakhil-Kharij Panji* (admission-transfer register) (Ex.P4) and stated that as per the school register, the date of birth of the prosecutrix is 5.6.1989. Assistant Sub-Inspector B.P. Dubey (PW10) has stated that he was the Investigating Officer of the offence in question. During investigation, he prepared spot-map (Ex.P5). He seized *Dakhil-Kharij Panji* vide Ex.P3. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
12. A minute examination of the above evidence makes it clear that at the time of incident, age of the prosecutrix was below 18 years. From the statements of the witnesses, it is also clear that the Appellant and the prosecutrix were caught at the Kharwat Railway Crossing by the father of the prosecutrix and other witnesses. As per the statement of the prosecutrix (PW4), the Appellant had

come to her school and telling her that her father had met with an accident took her away on his scooter. But, this fact is not mentioned in her case diary statement (Ex.D7). On this point, she has exaggerated her statement. From the statement of the prosecutrix (PW4), it is also clear that she went away along with the Appellant on his scooter and on the way they met with Kalawati (PW2), mother of the prosecutrix, Omprakash (PW1), father of the prosecutrix and Santosh (PW3). But, on none of those occasions, the prosecutrix shouted or raised her voice. If the Appellant had been forcefully taking the prosecutrix away with him, she would have shouted or raised her voice for help. But, she did not do so. There is also no statement given by the prosecutrix that when the Appellant met her for taking her away with him, at that time, he allured her that he will marry her and on this allurement, he took her away with him. In paragraph 3 of her examination-in-chief, it is stated by the prosecutrix that when the Appellant was taking her away, he did not talk with her about their marriage. When, Omprakash (PW1), father of the prosecutrix and Santosh (PW3) met them on the way, at that point of time, the Appellant, for the first time, told the prosecutrix that he will marry her. But, this fact is also not mentioned in her case diary statement (Ex.D7). Had there been no love relation between the Appellant and the prosecutrix, how the Appellant would have talked with the prosecutrix about their marriage on the way for the first time. From the entire evidence, it seems that there was a love relation between the Appellant and the prosecutrix and the prosecutrix herself had gone away along with the Appellant at her own will. The Appellant had called her or he had taken her away with him on an allurement that he will marry her is not established. Therefore, the offence alleged

against the Appellant under Sections 366 and 363 of the Indian Penal Code is not proved.

13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
14. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
15. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge