

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 131 of 2010**

Kabari, S/o Ram Gond, aged about 40 years, R/o Village-
Ranidahra, Police Station- Bodla, District- Kabirdham (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through - Station House Office- PS Bodla,
District- Kabirdham (C.G.)

---- Respondent

For Appellant : Mr. Ajit Singh, Advocate.

For State/respondent : Mr. Vinod Kumar Tekam, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

09/10/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.01.2010 passed by Sessions Judge, Kabirdham (Kawardha) (C.G.) in Session Case No. 19/2009, wherein the said court convicted the appellant- Kabari for commission of offence under Sections 366, 342 & 376 (A) of IPC and sentenced to undergo R.I. for 2 years and fine of Rs. 1000/-, R.I. for six months and R.I. for 2 years and fine of Rs. 1000/- respectively with further default stipulations.
2. As per case of the prosecution, prosecutrix (PW-1) was earlier married with appellant-Kabari and stayed with him for about 3 years. On the date of incident, both Kabari & Phoolkunwar have abducted her when she was going in jeep and confined

her in their house where appellant- Kabari committed intercourse with her.

3. Case of the prosecution is based on statement of prosecutrix (PW-1). Other witnesses namely Smt. Pooja (PW-2) & Siddharam Gond (PW-3) have deposed what is informed to them by Shriram and Rajulal. Prosecutrix has admitted in her examination in chief that she stayed with appellant-Kabari as his wife for about 3 years. She further deposed (Para 8) that she stayed in the house of appellant-Kabari and made no complaint to anyone for her help. She further deposed that she used to go to the kitchen garden of the appellant-Kabari for bath and she moved out of house to ease herself. From statement of prosecutrix, it is difficult to hold that anything is done against her will or without her consent.
4. Appellant-Kabari was her husband and no one was produced before the trial court to show that he married with the prosecutrix after her leaving to Kabari, therefore, relation between the appellant-Kabari and the prosecutrix is not legally terminated. It would be difficult to hold that the appellant-Kabari compelled the prosecutrix by force to go with him especially when he was previously residing with the prosecutrix as her husband. When prosecutrix is not legally separated with appellant-Kabari, it is not a case under Section 376 (A) of IPC and again the case under Sections 366 & 342 of IPC is also not made out. As consent on the part of the

prosecutrix is established, the appellant-Kabari cannot be held guilty for wrongful confinement.

5. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 366, 376 (A) & 342 of IPC.
6. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge