

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 492 of 2015

Amardas Sonwani, S/o. Anjoridas, Aged About 40 Years, R/o. Village Dhauraband, Police Station - Pipariya, Civil and Revenue District Kabirdham Chhattisgarh. Present Address - Ishwar Nagar, Gulmohar Colony, Police Station - Sawpara, Civil and Revenue District - Bhopal Madhya Pradesh.

---- Appellant

Versus

State Of Chhattisgarh, Through - Station House Officer, Police Station Pipariya, District Kabirdham Chhattisgarh.

-----Respondent

For Appellant	: Mr. Dharmesh Shrivastava, Advocate
For Respondent/State	: Mr. Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

28/11/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Fast Track Court of Additional Sessions Judge and Special Judge (Protection of Children from Sexual Offence Act, 2012), Kabirdham, District – Kabirdham (C.G.), in Sessions Trial No.48/2015 on 07.04.2015, convicting the appellant for the offence under Section 363 and 366-A of the Indian Penal Code and sentencing him for imprisonment to the period already undergone by him and fine of Rs.5,000/- on each count and

in default of payment of fine, further imprisonment for one year for each offence.

2. The case of the prosecution is this that the appellant abducted the minor prosecutrix on 14.06.2007 and thereafter established physical relation with her, which amounts to offence of rape and because of this physical relation one child was born to the prosecutrix. Missing report was lodged by Rajesh Kulmitra (P.W.-1), father of the prosecutrix and on the basis of the information given, offence under Section 363 of the Indian Penal Code was registered and FIR (Ex.P-6) was recorded. The prosecutrix was recovered from the custody of the appellant vide Ex.P-5. After recording of statement and completion of investigation, charge-sheet has been filed before the concerned Court.
3. Appellant was charged with offence under Section 363, 366A and 376 (1) in the alternative 493 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant acquitted from the charges under Section 376 (1) in the alternative 493 of the I.P.C. and Section 4 of POCSO Act and he stands convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellant that the conviction of the appellant is totally bad in law as the prosecutrix and the other witnesses have not supported the prosecution case. Hence, the order of conviction is bad in law. Hence, it is prayed that the appellant be acquitted of the charges.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Prosecutrix (P.W.-2) was minor in the year 2007. She has stated in her deposition that in the year 2007, without informing anybody, she had left for Bhopal for further studies. While studying in Bhopal, she joined some part time job and continued with her studies. In the year 2009, she passed 12th class and then she met with the appellant. Both of them then married and out of their wedlock, a child was born on 30.04.2010.
9. Rajesh Kulmitra (P.W.-1) is the father of the prosecutrix. He has stated that his daughter had left the house without informing

anybody. When the girl was recovered, on enquiring she stated that she had left for Bhopal for further studies and had married after passing Class-12th. Similar is the statement of Ranjeeta Kulmitra (P.W.-3), mother of the prosecutrix.

10. Seema Sahu (P.W.-4), teacher in Government Primary School has stated that according to the entry in the school register vide Ex.P/3, date of birth of the prosecutrix was recorded as 11.09.1990. On the basis of these unrebutted statement of the witnesses, considered here in above, it is clear that the prosecutrix (P.W.-2) had went on her own to Bhopal to continue with her further studies and it was not the appellant, who had abducted her or allured her with false promise to marry her. According to the statement given by the prosecutrix, she met with the appellant in the year 2009 and then she married her. As per the proof of the school entry register, it can not be presumed that the prosecutrix (P.W.-2) was minor girl in the year 2009. Hence, under these circumstances, it does not appear in any manner that it is a case of abduction or procuration of minor girl for illicit purposes. Hence, after due consideration on all the evidence present on record, I am of this opinion that this appeal deserves to be allowed and it is hereby allowed. The appellant is acquitted of the charges. If the appellant is on bail, his bail bonds shall continue for a period of six months subject to the provisions of Section 437 of Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)
Judge