

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2610 of 2000

Safari Bai W/o Govind Das Panka, aged 70 years, R/o Bansia, Police Station Kotwali, District Raigarh (M.P.).

--- Appellant

Versus

State Of Chhattisgarh Through Police Station Kotwali, District Raigarh (M.P.).

---Respondent

For Appellant	:	Shri Akhil Agrawal, Advocate (appointed by the Court).
For Respondent/State	:	Shri Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/01/2018

1. None for the appellant even when the case is called out for hearing in the second round.
2. This case was allotted to Shri Anant Bajpai, Advocate through the High Court, Legal Services Committee.
3. As there is no representation on behalf of the appellant, Shri Akhil Agrawal, Advocate present in the Court is appointed as counsel to represent the appellant in the present case.
4. The appellant in the instant case stands convicted for the offence punishable under Sections 366 and 120(B) of I.P.C. and have been sentenced to undergo R.I. for 1 year and 6 months in both Sections.
5. The challenge is to the judgment of conviction dated 18/08/2000 passed by the learned Sessions Judge, Raigarh in Sessions trial number 187/1999.
6. The allegation against the present appellant as per the prosecution case is that, the present appellant in connivance with the other accused

persons is said to have taken the victim-Geetabai-PW/2 from her native place to Nizamuddin, Delhi and where it is alleged that the present appellant has sold the victim to some persons at Nizamuddin.

7. The counsel for the appellant submits that, the entire story of the prosecution is totally false and fabricated and that the present appellant has been falsely implicated in the case and that there is no substantive material available with the prosecution for prosecuting the present appellant. That the necessary ingredients required to make out an offence under Section 366 or for that matter the proof of any conspiracy being made against the present appellant is not available. He further submits that, the conviction of the appellant also is bad in law and deserves to be set-aside. According to him, the plain reading of the deposition of victim itself would show that, at no point of time had the present appellant in any manner put any pressure upon the victim for going along with her to Delhi. He further submits that, on the contrary, reading of the deposition of the victim-PW/2 would reveal that, she had voluntarily gone along with the present appellant. He further submits that, she had ran away from the matrimonial home on account of some dispute that she had with her husband-PW/1. It was further contended that, it is a case where there does not appear to be any role played by the present appellant with which she could have been convicted for the offence under Section 366 or 120(B) of the I.P.C. and thus prayed for the judgment of conviction be set aside and the appellant be acquitted of all the charges levelled against her.

8. The State counsel however opposing the appeal submits that, it is a case where the prosecution has led an evidence of seven persons including the victim-Geetabai-PW/2 and her husband Dukhuram, the

lodger of F.I.R. and same has been proved by the other witnesses examined on behalf of the prosecution and thus prayed for rejection of the appeal.

9. Having heard the contentions put forth on either side and on perusal of record what is primarily to be seen is the statement of the prosecutrix from where it is reflected that, she is a grown-up middle aged lady, aged around 25 years whereas the appellant in the instant case is an old meek lady, aged around 70 years. Further the victim in her evidence has stated that, she had a fight with her husband and on account of which she voluntarily left the house of her husband. Further it reflects that, from her house, she had gone straight to her brother's house-Goverdhan where she had stayed for a considerable period of time and thereafter she had gone along with the present appellant to Delhi.

10. What is primarily to be seen is that, the charges levelled against the present appellant is that of Sections 366 and 120(B) of I.P.C. Section 366 is pertaining to abduction and kidnap, where kidnap has been referred to in Section 359, 360 & 361 of I.P.C. and abduction has been defined in Section 362 of I.P.C.

11. Plain perusal of these provisions would show that, there is no element of force compulsion, deceitfulness or inducement which is required to attract the said provisions.

12. In the instant case, perusal of the statement of the victim itself would show that, she had voluntarily left her matrimonial home and that she had a fight with her husband which made her leave the house and further she had gone to her brother's house. Further, from perusal of the entire statements, there does not appear to be any evidence led by the prosecution either by PW/1 or PW/2 or by any of the police personals

during the course of the trial which would show that, there was a conspiracy made between the other accused persons and the present appellant so as to attract the provisions of Section 120(B) of I.P.C.

13. In the absence of any substantive evidence led by the prosecution to make out an offence of kidnapping or abduction, at the same time there being also no evidence of any conspiracy being made between the present appellant and the other accused person, this Court is of the opinion that apparently the offences under Sections 366 and 120(B) of I.P.C. is not made out. What further is pertinent to take note is that, the victim in the instant case was a young lady, aged around 25 years of age having full strength and energy in her and the appellant herein was an aged lady of more than 70 years of age and that if at all if, at any point of time, the victim intended to escape from the clutches of the present appellant, she had sufficient strength to escape, but she has never tried to escape which goes to prove the case that, there was no element of kidnapping or abduction on part of the present appellant.

14. Given the aforesaid facts and circumstances of the case and also considering the age of the present appellant who at the time of filing of the appeal was more than 70 years and today must be somewhere around 90 years, this Court is of the opinion that the prosecution in the instant case has not been able to led sufficient evidence to establish the offence under Sections 366 and 120(B) of I.P.C.

15. Accordingly the impugned judgment dated 18/08/2000 passed by the learned Sessions Judge, Raigarh in Sessions Trial No.187/1999 deserves to be and is accordingly set aside. The appellant is acquitted of the charges under Sections 366 and 120(B). The appellant is said to be on

bail. She is set at liberty subject to the conditions of Section 437-A of Cr.P.C.

16. The Secretary, High Court Legal Services Committee to issue authorization letter in favour of Shri Akhil Agrawal, Advocate.

17. This Court will like to render a word of appreciation to Mr. Akhil Agrawal, Advocate for providing valuable legal assistance in the disposal of the appeal.

Sd/-

(P. Sam Koshy)
Judge

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