

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 343 of 2001**

Taran Das aged about 21 years, S/o Vishnu Das, R/o Village- Kuthrod
Police Station- Suhela, District- Raipur (C.G.).

----Appellant**Versus**

The State of Chhattisgarh, through- Station Officer, Police Station-
Suhela, District- Raipur (C.G.).

---- Respondent

For Appellant	:	Mr. V. Lalchandani, Advocate
For Respondent	:	Mr. UKS Chandel, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****09/01/2018**

1. This appeal has been preferred under Section 374 of the Code of Criminal Procedure against the judgment and order dated 28/03/2001 passed in ST No. 269/2000 by the 2nd Additional Sessions Judge, Baloda Bazar convicting the accused/appellant under Sections 363 & 366 of the Indian Penal Code and sentenced to undergo RI for two years with fine of Rs. 500/- and RI for 3 years with fine of Rs. 500/-, respectively with default stipulations.
2. Case of the prosecution, in brief, is that on 29/04/2000, the prosecutrix (PW7) (minor girl) had left her house without informing anybody in her family. She was searched in the nearby village, but when she was not

found, a missing report was lodged in P.S. Suhela. On 04/05/2000, the prosecutrix was recovered from the house of Vishnu (father of accused/appellant). It is alleged that accused/Appellant had abducted the prosecutrix from the lawful guardianship of her father and had committed sexual intercourse with her without her consent, which resulted into her pregnancy. It is alleged that the accused/appellant, by giving medicine, aborted the pregnancy of the prosecutrix. Both the prosecutrix and the accused/ appellant were medically examined. Some love letters were seized from the possession of the prosecutrix. Statements of witnesses under Section 161 of Cr.P.C. were recorded. After investigation, a charge-sheet was filed under Sections 363, 366 (A) and 376 of IPC. Charges were framed against him under Sections 363, 366, 376 (1) and 312 of IPC.

3. In support of its case, the prosecution examined as many as 16 witnesses. Statement of the Applicant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegation made against him, pleaded innocence and false implication. No defence witness has been examined.
4. After trial, the accused/ appellant was acquitted of the charges framed under Sections 376 & 312 of IPC, but convicted and sentenced as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the appellant argued that the prosecutrix (PW7) has categorically stated that she had gone alone and the accused/appellant had not abducted her. From the material available on record, no case under Sections 363 & 366 of IPC is made out against the

accused/appellant. It has been further argued that there was a love affair between the prosecutrix and the accused/appellant, therefore, the prosecutrix had left her house at her own will. There is no evidence of any threat, inducement or deceitful means adopted by the accused for persuading her to leave her lawful guardianship. There is nothing to show that she was taken away from her lawful guardianship by the accused/appellant.

6. Per contra, learned Counsel appearing for the State has supported the impugned judgment and argued that the case of the prosecution is proved beyond reasonable doubt against the accused/appellant and there is no infirmity in the impugned judgment.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. Tarjan Bai (PW6), mother of the prosecutrix, has stated that about 6-7 months prior to recording of her evidence, her daughter (prosecutrix) aged about 14-15 years had left her house. After search, when she was not found, a missing report was lodged. She has further stated that after 2-4 days, the prosecutrix returned to their house. In para 11 of her statement, she has admitted that her daughter had been abducted by the accused/appellant and later on she was recovered from the accused/appellant
9. Nandlal (PW5) has supported the above statement of Tarjan Bai (PW6) and stated that on 02/05/2000 Tarjan Bai had lodged a missing report which was registered in Rojnamcha (Ex.P7).

10. Saukat Ali, (PW8), Investigating Officer has submitted that during investigation, he had recovered the prosecutrix from the house of Vishnu (father of the accused/appellant) vide recovery memo (Ex-P-13).
11. Dehra Ram (PW10) has duly corroborated the statement of Saukat Ali (PW8) and stated that from the house of Vishnu (father of the accused/appellant), police had recovered the prosecutrix vide Ex.P-13.
12. The prosecutrix (PW7) has stated that due to some quarrel with her mother, she had left her house. She has categorically stated that she had not gone with the accused/appellant. She has been declared hostile. In para 10 of her cross-examination, she has categorically stated that she had left her house alone and she was not taken away by cajoling.
13. Kotwar -Puhup Das (PW9) has deposed that the birth of the prosecutrix was informed by her father, Hemant (PW14). The entries made in the Kotwari register reveals that the date of birth of the prosecutrix was recorded in the Kotwari register on 12/08/1984. Mother of the prosecutrix, Tarjan Bai has also stated that at the relevant time, the prosecutrix was aged about 14-15 years.
14. Father of the prosecutrix, Hemant (PW14) has also deposed that the birth entry of his daughter was registered in Kotwari register and as per this witness also, the date of birth of the prosecutrix is 20/07/1984.
15. Dr. Farzana Khan (PW1) is the witness, who had examined the prosecutrix on 05/05/2000 and prepared her medical report (ExP.1). She opined that there was no external or internal injury found on the body of the prosecutrix. She further opined that no definite opinion could be

given regarding intercourse.

16. Dr. Ashok Kumar Soni (PW2) is the witness, who had examined the accused/appellant and prepared his medical report (Ex.P-3), in which, he has stated that the appellant was capable to perform sexual intercourse.
17. Narsingh Baghel (PW11) is the witness, who had prepared spot map (Ex.P-11).
18. R.P. Sharma (PW16), Sub-Inspector is the witness, who had partly investigated the matter and recorded statements of some of the witnesses under Section 161 of Cr.P.C..
19. On minute examination of the entire evidence adduced by the prosecution, it is clear that on the date of incident, certainly, the age of the prosecutrix was about 16 years. The prosecutrix (PW7) has not supported the case of the prosecution and she was declared hostile. She has categorically stated that due to a quarrel, she herself had left her house. She has further stated that the accused/appellant did not take her away by cajoling. As per recovery memo (Ex.P-13), the prosecutrix was recovered from the house of Vishnu (father of the accused/appellant). Except this, there is no evidence against the accused/appellant in this case. Even if it is admitted for the sake of argument that the prosecutrix was recovered from the house of the accused/appellant, there is no evidence on record to show that the accused/appellant had taken away the prosecutrix from her lawful guardianship by cajoling. Hence, there is no direct or indirect evidence against the accused/appellant that he had taken away the prosecutrix by cajoling and the offence under Sections

363 & 366 of IPC is not proved against him beyond reasonable doubt.

20. In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set-aside. The accused/appellant is acquitted of the charges framed against him.
21. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge