

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.638 of 2001

Judgment Reserved on : 23.7.2018

Judgment Delivered on : 12.10.2018

Nishar Mohammad, S/o Mohammad, aged about 24 years, R/o Pathragudo, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Jagdalpur, District Bastar, Chhattisgarh

--- Respondent

For Appellant : Shri Keshav Dewangan, Advocate
For Respondent/State : Shri Satish Gupta, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 16.7.2001 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.462 of 2000 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.500/- with default stipulation

2. Facts of the case, in brief, are that the prosecutrix (PW4), aged about 15 years, daughter of Angad (PW1), on the fateful day, was a student of 7th Standard of Maharani Laxmibai Girls School,

Jagdalpur. Allegedly, on 29.4.1999 at about 9:00 a.m., the Appellant abducted her from her legal guardianship. When she did not return her home, her father Angad (PW1) made a search for her. Ultimately, on 14.5.1999, he made a written report (Ex.P3) on the basis of which First Information Report (Ex.P1) was registered. On 17.5.1999, the prosecutrix went to the police station where her statement was recorded. Statements of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. Regarding her age, one certificate was seized from Headmistress Gita Yadu (PW7). According to the entry of dakhil-kharij panji (admission-transfer register), date of birth of the prosecutrix is 27.9.1984. 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. Charge was framed against him under Section 366 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 7 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded innocence. No witness has been examined 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 argued that the incident took place on 29.4.1999, but the FIR (Ex.P1) was lodged on 14.5.1999, i.e., after about 15 days of the incident and the delay

has not been properly explained. As per the statement of Angad (PW1), his daughter (the prosecutrix) returned on 30.4.1999 and he had lodged the report on 30.4.1999 itself. But, there is no report dated 30.4.1999 available on record. From the statement of the prosecutrix (PW4), it is also clear that she herself had left her house at her own will. There is nothing on record on the basis of which it could be accepted that the Appellant had allured the prosecutrix that he will marry her and on the allurement he took her away. Therefore, no offence under Section 363 or 366 of the Indian Penal Code is made out.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. With regard to the age of the prosecutrix, Gita Yadu (PW7), Headmistress of Primary School, Jagdalpur has stated that as per the entry of the dakhil-kharij register, the date of birth of the prosecutrix is 27.9.1984. During cross-examination, this witness has also stated that at the time of admission of the prosecutrix in the school, her date of birth was recorded in the concerned register as stated by the informant. In her Court statement, the prosecutrix (PW4) has stated that her date of birth is 23.9.1984. Her father Angad (PW1) and her mother Jayanti (PW2) have stated that at the time of incident, age of the prosecutrix was 15 years. Angad (PW1) has also stated that birth of the prosecutrix was of September, 1984. The statements of the prosecutrix (PW4), her

father Angad (PW1), her mother Jayanti (PW2) have not been challenged during their cross-examination. Thus, it is clear from the evidence on record that at the time of incident, the prosecutrix was certainly below 18 years.

9. With regard to the incident, Angad (PW1) has stated that on the date of incident, his daughter (the prosecutrix) had gone to the school, but she did not return home. On making search for her, Babbu (PW3) told him that the Appellant had taken the prosecutrix away with him. But, Babbu (PW3) has not supported the above statement of Angad (PW1) and has been declared hostile. Angad (PW1), in his cross-examination, in paragraph 5, has stated that his report was recorded in the police station on 30.4.1999 and the prosecutrix had also reached to the police station on 30.4.1999 itself and the police had returned the prosecutrix to him on supurdnama on 30.4.1999 itself. He has further stated that since the Appellant was taking round of his house, he had again lodged a report on 14.5.1999. In her cross-examination, in paragraph 6, the prosecutrix (PW4) has also admitted the fact that on the next day of the incident, her father Angad, searching for her, had come to Dharampura and he had taken her back on his bicycle. Thereafter, her father refused to keep her with him and he returned home. Therefore, she went to the house of the Appellant.
10. Assistant Sub-Inspector Diwakar Upadhyay (PW5) is the witness who recorded the FIR (Ex.P1) on 14.5.1999 on the basis of the written report (Ex.P3). He has categorically admitted the fact that neither on 29.4.1999 nor on 30.4.1999, father of the prosecutrix lodged any report in the police station. He lodged the report in the

police station on 14.5.1999. The prosecutrix (PW4) has deposed that on the date of incident, the Appellant met with her on the ground when she was going to the school. He told her that he will marry her and on her refusal to go with him, he forcibly took her away on his bicycle. She sat on the carrier of his bicycle. Thereafter, the Appellant forcibly caught her hands and began to frighten her. He took her to Village Chhipawand on his bicycle. Thereafter, he took her to Bijapur in a bus and kept her there at the house of his relatives for about 2-3 days. She has admitted the fact that all the above facts were stated by her before the Court for the first time. In her cross-examination, she has also admitted that Ex.D2 and D3 are the joint photographs of her and the Appellant. She has also admitted the fact that when the Appellant was taking her away forcibly, she did not shout. He took her to Village Chhipawand where she stayed for a night. She did not raise any alarm either at Village Chhipawand or during her travel in the bus. She has further admitted that she stayed along with the Appellant at Dharampura also. There also, she did not raise any alarm.

11. On minute examination of the above evidence, it is clear that the prosecutrix (PW4) has stated in her Court statement that the Appellant, by alluring her that he will marry her and by showing her a knife, took her away on his bicycle. He threatened her also. Thereafter, he took her to the house of his Bua (sister-in-law) at Village Chhipawand. Thereafter, he took her to Bijapur in a bus. She also stayed at the house of the Appellant at Dharampura. But, all these facts are not mentioned in her statement recorded under Section 161 of the Code of Criminal Procedure. All these facts are stated by her for the first time before the Court. From the

statement of the prosecutrix (PW4), it is also clear that during her journey in the company of the Appellant to various aforesaid mentioned places, she never raised any alarm against the Appellant while she had ample opportunity to do so and come out of his clutches. From the statements of the prosecutrix (PW4) and her father Angad (PW1), it is also clear that on 30.4.1999, her father had taken her from Dharampura to the police station and when he refused to take her to his house, she went along with the Appellant to Bijapur where she stayed for about 2-3 days. During that stay, she did not make any complaint against the Appellant to anyone. Thus, it seems that the prosecutrix had gone along with the Appellant at her own will. The Appellant had taken her away forcefully is not established. From the statement and admission of the prosecutrix, it is also clear that she herself left her house at her own will. There is nothing on record on the basis of which it could be accepted that the Appellant had taken/abducted her away on allurement that he will marry her. In these circumstances, though the prosecutrix was below 18 years of age on the date of incident, she herself had gone along with the Appellant at her own will. She herself had left her house and the Appellant had not allured her that he will marry her. Therefore, no offence under Section 363 or 366 of the Indian Penal Code is made out against the Appellant.

- 12.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
- 13.** It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of

the provisions contained in Section 437A of the Code of Criminal Procedure.

- 14.** 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