

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 313 of 2010

State of Chhattisgarh, Through District Magistrate, Korea (C.G.)

--- APPELLANT

Versus

1. Amit Kumar, S/o. Shivcharan, aged about 19 years, R/o. Gelhapani Garage Dafai, Outpost Korea, P.S. Chirmiri, District Korea (C.G.).

---- RESPONDENTS

For the Appellant :- Mr. A.S.Kachhwaha, Addl. Advocate General

For the Respondents:- Mr. Ranbir Singh Marhas, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Ram Prasanna Sharma, J.

14. 03. 2018

1. This acquittal appeal is directed against the judgment dated 29.02.2008 passed by the First Additional Sessions Judge, Mahendragarah, Session Division Korea (C.G.) in Session Trial No. 75/2006, wherein the said Court has acquitted the respondent from charge under Sections 363, 366, 376 of the IPC, 1860.
2. As per the prosecution case, the prosecutrix and the respondent are resident of village Sihur. On the intervening night of 12-13/09/2006, respondent Amit Kumar enticed minor prosecutrix with an intent that she may be compelled or knowing it to be likely that she may be compelled to marry with him or in order she may be forced to illicit

intercourse, took her from his residence and visited many places where Amit Kumar committed forcible intercourse with her. It is alleged that co-accused Rajeshwar abetted Amit Kumar in commission of the said offence. The matter was reported to Police Station Korea. After completion of investigation, charge sheet was filed against the respondent. Respondent pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statements of the respondents were recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the State submits as under;-
 - (i) That the trial Court erred in evaluating the prosecution witnesses as they are fully reliable and their evidence do not suffer from any infirmity warranting acquittal of the respondent. The age of the prosecutrix is proved to be below 16 years but the trial Court overlooked this aspect of the matter and came to wrong conclusion.
 - (ii) That the trial Court is not justified in giving too much weightage to minor contradictions against settled principle of law.
4. On the other hand, learned counsel for the respondent submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed or modified while invoking jurisdiction of the appeal.
5. We have heard learned counsel for both the parties and perused the record of the trial Court.
6. Respondent Amit Kumar is charged for kidnaping the prosecutrix from lawful guardianship. As per section 361 of the IPC whoever entices

any minor under 18 years of age, if she is female, is said to have kidnaped her from lawful guardianship.

7. In the present case, Punita Bai (PW-5) who is mother of the prosecutrix is not able to tell the exact date of birth of the prosecutrix. Surajkumar (PW-6) is brother of the prosecutrix and he is also not able to speak about the date of birth of the prosecutrix. One mark sheet was filed before the trial Court but no one has been examined to prove the said mark sheet in which the date of birth of the prosecutrix is written to be 08.01.1993. In absence of evidence, the said certificate is not proved and on the basis of the said certificate, age of the prosecutrix is not proved. One radiological examination report was submitted with the charge sheet but that is also not proved by any of the witnesses specially the radiologist who has examined the prosecutrix.
8. In absence of any evidence regarding the age of the prosecutrix, it is not proved that on the date of the incident i.e. 12/09/2006 the prosecutrix was under 18 years of the age and, therefore, kidnaping from lawful guardianship is not established by any cogent evidence. The prosecutrix deposed before the trial Court that she visited with respondent Amit Kumar to various places namely Gelhapani, Annupur, Rampur, Kotraboar, Pamgarh, Bilaspur and Bhopal and at some of these places she stayed in hotel with the respondent Amit Kumar. She did not inform to anyone in any of the said places that respondent Amit Kumar has kidnapped her forcefully. As her age is not proved to be below 18 years, it can be inferred that she is a major and visited various places with Respondent Amit Kumar with her consent. Thereafter, it is not established that the physical relation made by

respondent Amit Kumar with her was against her will or without her consent.

9. Considering her silence and staying at different places with respondent Amit Kumar it was not safe for the trial Court to come to the conclusion that sexual intercourse committed with her was without her consent or against her will, we are of the opinion, that the findings recorded by the trial Court is based on legally admissible evidence. Considering the facts and surrounding circumstances of the case, the same is not liable to be interfered while invoking jurisdiction of the appeal. Accordingly, the appeal fails and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma