

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRA No. 545 of 2010

- Bandhan Singh Vishwakarma S/o Johan Singh Vishwakarma R/o Vill. Ghuichua Poice Station Pali, Pre. R/o Lakhram PS Ratnapur, Bilaspur

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, District Bilaspur (CG).

---- Respondent

For Appellant : Mr. Raj Bahdur Singh, Advocate.

For Respondent/State : Mr. Suryakant Mishra, PL.

**Judgment on Board
(24-08-2018)**

1. Shri Deepak Jain and Dheerendra Pandey, Advocates have been engaged by the appellant but despite repeated calls they have not appeared on all the dates of hearing i.e., from 20-8-2018 to 24-8-2018. Therefore, Mr. Raj Bahdur Singh Advocate who is present in the Court has been appointed as *Amicus Curaie* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 1-5-2009 passed by the District and Sessions Judge, Bilaspur, District Bilaspur (CG) in Sessions Trial No. 30 of 2009 wherein the said Court convicted the

accused/appellant for commission of offence under Sections 363, 366 and 376 (1) of the IPC 1860 and sentenced him to undergo RI for three years and fine of Rs.100/-, RI for five years and fine of Rs.100/- and RI for ten years and fine of Rs.100/- with default stipulations.

3. In the present case, date of birth of the prosecutrix is 6-3-1994. On 6-1-2008 a missing report was lodged in Police Station Ratanpur by the complainant Rameshwar (PW/3) who is brother of the prosecutrix that from 29-12-2007 she was found missing from her house situated at village Lakhram. After nine months of the report, she was found in the custody of the appellant. It is alleged that the appellant kidnapped the minor prosecutrix from lawful guardianship of her parents and it is done with intent to subject her for illicit intercourse and rape was committed on her by the appellant.
4. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court convicted the appellant as mentioned above.
5. Learned *amicus curiae* appears on behalf of the appellant and submits as under:
 - i) Statement of the prosecutrix is not reliable as she was accompanying the appellant for nine months and did not complaint to anyone,

therefore, offence for which the appellant is charged, is not established.

ii) There is no independent witness, therefore, benefit of doubt ought to have been extended to the appellant.

iii) Finding of the trial Court is based on legally admissible evidence and same is not liable to be reversed.

6. On the other hand, learned State counsel supporting the impugned judgment submits that the finding of the trial Court is based on oral and documentary evidence adduced and same is just and proper.
7. I have heard learned counsel for the State, perused the judgment impugned and record of the trial court.
8. To substantiate the charge, prosecution examined as many as ten witnesses.
9. PW/1 Sonkunwar is mother of the prosecutrix. As per her version, age of the prosecutrix is between 13 to 14 years. PW/3 Rameshwar is brother of the prosecutrix and he deposed on same line that the age of the prosecutrix is between 13 to 14 years. As per version of prosecutrix (PW/4), she studied in Government Girls Middle School, Lakhram upto 6th Class. PW/9 Bahoran Lal Sardaj is Lecturer of Government Girls Middle

School, Lakhram and as per version of this witness, date of birth of prosecutrix is recorded as 6-3-1994.

10. Looking to the evidence of the mother and brother of the prosecutrix and school register, it is established that the age of the prosecutrix was 13 years and nine months at the time of incident i.e., 29-12-2007 and she was minor as per Indian Majority Act, 1875. As she was below 18 years, when she was taken away without consent of the guardian is an offence as defined under Section 361 of the IPC and same is punishable under Section 363 of the IPC.
11. From the evidence of prosecutrix (PW/4), appellant committed intercourse with her that is why she got pregnant. Version of this witness is supported by version of Dr. George A. Khakha (PW/6) and Dr. Nikita Kanwar (PW/7). From the statements of PW/1 Sonkunwar and Rameshwar I(PW/3), it is established that the prosecutrix was taken away from the custody of the parents and from the statement of the prosecutrix it is established that she has been subjected to intercourse by the appellant. From over all evidence it is established that the appellant took away the prosecutrix with intent that she will be seduced to commit intercourse and as the prosecutrix is minor below 16 years of age, case of consent is not available in the present case.

Therefore, the act of the appellant falls within mischief of punishable under Sections 363, 366 and 3786(1) of the IPC.

12. True it is that there may be some contradictions and omissions in the evidence of prosecution witnesses, but same is not sufficient to discard the evidence as a whole. Contradiction which does not go to the route of the case, is insignificant and case of prosecution cannot be discarded on that ground. Offence of rape is committed in secrecy, therefore, prosecutrix is the main witness to the incident, therefore independent witness is not available in case of rape. From the admissible evidence of mother and brother of the prosecutrix, her kidnapping is established and from the evidence of prosecutrix offence of rape is established, therefore, argument advanced on behalf, of the appellant is not sustainable.
13. Considering all the facts and evidence available on record, this court is of the opinion that the finding arrived at by the trial Court is based on evidence on record which is just and proper. Conviction of the appellant for the said offence is hereby affirmed. Offence under Section 376 of IPC is punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years.

14. Accordingly, the appeal being devoid of substance is liable to be and is hereby dismissed. As per jail report, the appellant has suffered full jail term. Therefore, no order for arrest etc., is required.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**

Raju_