

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 69 of 2005

Deen Bandhu Yadav, S/o. Hem Sagar Yadav, Aged 23 years,
Occupation Labourer, Resident of village Tirbhauna, P. S. Pusaur,
Present address Kohakunda (Bedrachua) P.S. Chakradhar Nagar,
Raigarh (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Police
Station Chakradhar Nagar, Raigarh (C.G.)

---- Respondent

For Appellant : Mr. Roop Naik, Advocate
For Respondent : Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

12.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 07.12.2004 passed by the Second Additional Sessions Judge, Raigarh, Session Division Raigarh (C.G.) in Sessions Trial No. 94/2004, wherein the said Court convicted the accused/appellant under Section 363 of the IPC, 1860 and sentenced him to undergo R.I. for 5 years and to pay fine of Rs. 500/- with default stipulation.
2. In the present case, the prosecutrix is (PW-3). As per case of the prosecution, the prosecutrix (PW-3) was in custody of her

mother and father. The prosecutrix (PW-3) deposed before the Court that she went along with the appellant of her own will and she has not been enticed by the appellant to move from the place of her guardian.

3. To substantiate the charge prosecution has examined as many as 12 witnesses in their support.

4. Dayaram (PW-4) is father of the prosecutrix. But, he did not state the date of birth of the prosecutrix. For determination of age of the prosecutrix, Janmejai Chauhan (PW-6) was examined by the prosecution before the Court who deposed that as per school register, the date of birth of the prosecutrix is 08-09-1987. The entry made in the school register on the basis of birth register maintained by Kotwar. As per version of this witness, the birth register is not produced before the trial Court. Again, from the statement of this witness, it is not clear as to who has really admitted the prosecutrix in the school and who has mentioned her date of birth in the school register. This witness has deposed that the date of birth in the school register was made by one Assistant Teacher Jolhe, but the said teacher was not examined before the trial Court. The prosecution has failed to produce any witness regarding the date of birth of the prosecutrix, therefore, it is difficult to hold that on the basis of school register the date of birth mentioned in the school is true date of birth of the prosecutrix.

5. For ascertaining the age of the prosecutrix one radiological examination was done by Dr. D. K. Tandon (PW-7) and after

examination of X-ray, this witness estimated the age of the prosecutrix to be 14 years.

6. Now the point for consideration is whether the age determined by radiologist is conclusive or not?

7. In the matter of **Mukarrab and other vs. State of Uttar Pradesh (2017) 2 SCC 210**, it is held as under

“ That the age determination based on ossification test though may be useful is not conclusive -X-ray ossification test can be no means be so infalliable and accurate a test to indicate the correct number of years and days of a person's life”.

8. As the date of birth cannot be determined from the radiological examination and there is no direct evidence of father and mother of the prosecutrix and school register is also not conclusive piece of evidence, it cannot be held that the prosecutrix was below 18 years on 02.03.2004. From the statement of the prosecutrix she visited the appellant of her own will, therefore, it is not established that the appellant enticed her to move from the place of guardianship. Again, when the age of the prosecutrix is not established to be below 18 years, it is also not proved that the prosecutrix is kidnapped from the lawful guardianship.

9. Taking into consideration the facts the findings arrived at by the trial Court is not sustainable under the law, the judgment of conviction and order of sentence passed by the trial Court is set aside.

10. Accordingly, the appeal is allowed. The appellant is acquitted of the charge under Section 363 of the IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh