

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 112 of 2010

State of Chhattisgarh through the District Magistrate, District Bilaspur
(C.G.)

--- APPELLANT

Versus

1. Lakhan Singh S/o. Rajni Kathale, Aged about 28 years, R/o. Bedapara, P.S. Lormi, District Bilaspur (C.G.)
2. Dharam Prakash, S/o. Vipat Prasad Kurre, Aged about 22 years, R/o. Dhorbandha, P.S. Lormi, District Bilaspur (C.G.)

---- RESPONDENTS

For the Appellant :- Mr. Arvind Dubey, Panel Lawyer

For the Respondents :- Ms. Indira Tripathi, Advocate

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

Judgement on Board

Per Ram Prasanna Sharma, J.

05. 03. 2018

1. This acquittal appeal is directed against the judgment dated 22.09.2008 passed by the Second Additional Sessions Judge, (FTC), Mungeli, Session Division- Bilaspur, in Session Trial No. 11/2007, wherein the said Court has acquitted the respondents from charges under Sections 363, 376 (I) read with Section 109 of the IPC, 1860.
2. In the present case, the prosecutrix is (PW-5). As per the prosecution case, on 23.12.2006, festival of Guru Ghasi Das was organized at village Bedapara Khamhi, where the prosecutrix (PW-5) had gone to attend the festival with her colleagues. At about 9.00 pm when she

was returning from the festival, the respondent and some other persons dragged her on the point of knife. Thereafter, the respondent took the prosecutrix to village Urethi where respondent Lakhan committed rape with her. The matter was reported to Police Station Lormi. After completion of investigation, charge sheet was filed against the respondents. Respondents pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statement of the respondents was 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 version of the prosecutrix (PW-5) is natural and truthful but the trial Court failed to appreciate the material available on record in its proper perspective and came to a wrong conclusion.
 - (ii) That the supporting witnesses are also reliable but the trial Court ignored the same.
 - (iii) That the minor discrepancies were not material but the trial Court came to a conclusion on the basis of irrelevant facts.
4. On the other hand, learned counsel for the respondents 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. First point for consideration is whether the prosecutrix was minor on the date of incident i.e. on 23.12.2006. Date of birth register is not filed before the trial Court. No school certificate regarding her date of birth is also filed and no one is examined, nor any record of the school was produced to substantiate her date of birth.
7. Kilodas (PW-6) is the father of the prosecutrix but he did not narrate the date of birth of the prosecutrix. No radiological examination was done to ascertain the approximate age of the prosecutrix (PW-5). There is no oral, documentary or radiological evidence regarding date of birth of the prosecutrix (PW-5) and in absence of any evidence the date of birth of the prosecutrix was not proved.
8. It is essential for offence of kidnapping under Section 363 of the IPC that the prosecutrix must be minor and her age must be proved to be below 18 years as per Indian Majority Act 1875 but the same is not proved. In this way, the prosecution has failed to prove that she was kidnapped from lawful guardianship of her parents.
9. The next question for consideration is whether she was kidnapped for commission of rape and was subjected to rape. Though, the prosecutrix stated in her examination-in-chief that when she reached near the house of Lakhan with Amar Bai, lakhan and other persons namely Amira, Arjun, Kishun and Gulab were present and they put cloth on her mouth and dragged her on the point of knife but she admitted in her cross-examination that these facts have not been mentioned in her previous statement recorded under Section 161 of the Cr.P.C. as per Ex.P D-1. Anything which is exaggerated in the Court can be accepted only when some plausible explanation is given

for not stating the same before the investigating agency but the prosecutrix (PW-5) has not given any explanation for her previous statement. Her version is fully exaggerated and as per her statement she has not assigned any reason and offered no explanation, therefore, story put forth by the prosecutrix is under cloud of suspicion.

10. As per the prosecutrix, she stayed at village Urethi with respondent Lakhan, Dharam and Amarbai, thereafter, she visited the house of one relative of respondent Dharam. She travelled to Raipur with respondent. She further deposed that two rooms were provided at Raipur, in one room she stayed with respondent Lakhan and in other room Amira and Amarbai stayed. She further deposed that Lakhan committed sexual intercourse with her at Raipur and there she stayed with lakhan for 8-9 days. She did not narrate the incident to anyone at Raipur and in other place also she did not inform anyone that she was kidnapped by respondent Lakhan.
11. Considering her silence and staying at different places with respondent Lakhan 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