

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 44 of 2013

Dhwajaram, S/o. Thandaram Yadav, Aged About 21 Years, R/o. Baheradih,
P.S. Champa, Distt -Janjgir Champa, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, S/o. Through Station House Officer, P.S. Janjgir, Distt.
Janjgir Champa, Chhattisgarh.

-----Respondent

For Appellant	: Mr. Avinash Mishra, Advocate
For Respondent/State	: Mr. Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

25/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Additional Sessions Judge, Janjgir, District – Janjgir-Champa (C.G.), in Sessions Trial No.103/2012 on 19.12.2012, convicting the appellant for the offence under Section 323 and 366-A of the Indian Penal Code and sentencing him to under go R.I. for 1 year and R.I. for 7 years along with fine of Rs.10,000/- respectively with default stipulations.

2. The case of the prosecution is this that on 13.03.2012 at about 11.30 AM, the victim was on her way to school when the applicant caught hold of her hand and asked her to go with him by force, brandishing a knife threatening to kill her. Thereafter, the appellant also assaulted the victim and caused injuries to her. The appellant then took the victim with him to some places, in the meanwhile, the father of the victim had lodged FIR. Subsequent to which, the victim was recovered from the custody of the appellant and her statement was recorded on the same day. Investigation was completed and the charge-sheet was filed subsequently before the concerned Court.
3. Appellant was charged with offence under Section 323 and 366-A of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 12 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the conviction of the appellant under Section 366-A of the Indian Penal Code is erroneous as there is no such evidence on record to show that the appellant had any intention

to subject the victim to any illicit intercourse. In the deposition of the victim herself and the other witnesses, it is disclosed that it was an abduction simplicitor, which is an offence punishable under Section 363 of the Indian Penal Code. It is also submitted that the prosecution has not duly proved the age of the prosecutrix because of which, no case is made out against the appellant for his conviction in the offence as aforesaid. The appellant was entitled for acquittal in this case. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellant in that case, the sentence of imprisonment of the appellant be reduced to the period of detention already undergone by him in jail.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Although the prosecution has not examined the witness of entry in school register, but statement of the father of the victim and the victim herself has not been challenged by the defence. Hence, the burden of prosecution has firmly completed. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.

7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. The victim Rajeshwari (P.W.-3) is 15 years old. She has stated that on the date of incident, when she was on her way to school, the appellant met on the way and asked her to come with him, when the witness refused, the appellant brandished a knife and also assaulted her causing injuries. Subsequent to that, the appellant caught hold of her hand and took her to a village – Kosmanda and from there to village- Oraee, where both of them stayed in the house of sister of the appellant. On the next day, the brother-in-law of the appellant was taking the appellant and witness to some place, when brother of the appellant met them and thereafter, they went to the police station. In cross-examination, the witness has denied that she herself was willing to marry the appellant. She has explained that she did not complain to anybody and raise alarm because the appellant has threatened to beat her in case, she raised alarm. Otherwise her statement on this point that appellant firstly assaulted her with a knife and then he by force took her to places till she was recovered by the police, is un-rebutted statement.
9. Fuleshwari (P.W.-4), who has witnessed the incident, when the appellant injured the victim and caught hold of her and took by dragging her. The statement has not been contradicted in her

cross-examination. Similarly, Saraswati Bai (P.W.-5) has also stated that she saw the appellant dragging and pulling the prosecutrix and going away. Same is the statement of Rajesh Yadav (P.W.-6) and Subham (P.W.-7).

10. Ram Kumar (P.W.-2) is the father of the victim. He has stated that age of the victim was 14 years on the date of incident. This statement has not been challenged in his cross-examination. Head Constable, Dhanush Kumar Pandey (P.W.-10) has stated that on 15.03.2012, the appellant himself brought the missing victim in the police station on the basis of which, the recovery memo (Ex.P-9) was recorded immediately, which is not disputed.
11. Dr. Manish Shrivastava (P.W.-12) has examined the victim on 16.08.2012 and found one injury of abrasion on left side of neck, which was simple in nature, regarding which report, Ex.P-14 was given by him. In a query, he has replied vide Ex.P-15 that injuries caused to the victim could not have been caused by any knife. This witness corroborates the statement of the victim to some extent that she was assaulted and injured.
12. After close scrutiny of the evidence present on record, I am of this view that the appellant had firstly assaulted and caused simple injuries to the victim and by force took her to different place, which amounts to abduction as defined under Section 361 of the Indian Penal Code. As the victim was minor on the date of incident, for the purpose of conviction under Section 366-A of the

I.P.C., the evidence was to be necessarily brought on record that there had been any intention of the accused that such abducted minor girl was intended to be subjected to forceful illicit intercourse. There is no such statement made by the victim or any other witness that appellant had any intention of such kind. Hence, without there being any such evidence, it can not be assumed that the appellant had such intention that the abducted victim was intended to be subjected to illicit intercourse. Hence, after due consideration, it is found that the act of the appellant is abduction simplicitor, which is punishable under Section 363 of the I.P.C. Whereas, the conviction for the offence under Section 323 of I.P.C. by the trial Court does not suffer from any infirmity.

13. On the basis of the discussion made and the findings hereinabove, this appeal is allowed in part. The conviction of the appellant under Section 323 of the Indian Penal Code is upheld, whereas the sentence imposed on the appellant is set-aside. The conviction and sentence of the appellant under Section 366-A of the Indian Penal Code is set-aside. Instead of that, the appellant is convicted for the offence under Section 363 of the Indian Penal Code. The appellant had been on jail for about 164 days during the investigation and subsequent to his conviction by the trial Court below. After considering the nature of offence and other circumstance of this case, I am of this opinion that this period of detention undergone by the appellant in jail is sufficient for the punishment of the offences for which he has been convicted.

Hence, both the offences are sentenced with the period of detention already undergone by him in jail along with fine of Rs.20,000/-. Subsequent to deposit of fine amount, Rs.15,000/- shall be paid to the victim Rajeshwari (P.W.-3) personally, who appears to be now major. In case the appellant has paid the fine amount earlier, the same shall be adjusted with the fine amount imposed upon the appellant in this case.

14. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge