

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1670 of 1998**

1. Ramesh Kumar S/o Mukundilal Harijan aged about 22 years, Resident of Shramik Nagar, Industrial Area, Bhilai Nagar, P.S. Jamul, District Durg, M.P (now C.G.).

---- Appellant**Versus**

1. State of Madhya Pradesh Now Chhattisgarh, through District Magistrate Durg (M.P.) now (C.G.)

---- Respondent

For Appellant	:	Smt. Ranjana Jaiswal, Advocate.
For Respondent	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**24/10/2019****Judgment On Board**

- 1) This appeal is filed under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 17/07/1998 passed by 3rd Additional Session Judge, Durg (M.P.) now (C.G.) in Session Trial No. 363/1997; whereby the appellant Ramesh Kumar stands convicted and sentenced as under:-

Conviction	Sentences
U/s. 363 of Indian Penal Code, 1860 (in short "IPC")	R.I. for 7 years and fine of Rs. 50/- in default of fine additional R.I. for 5 days.
U/s. 366 of IPC	R.I. for 7 years and fine of Rs. 50/- in default of fine additional R.I. for 5 days.
U/s. 376 of IPC	R.I. for 7 years and fine of Rs. 1,000/- In default of fine additional R.I. for 3 months.
(All sentences were directed to run concurrently)	

- 2) Case of the prosecution in brief is that on the date of incident i.e. on 13/03/1995 at about 04:10 PM (approx.) the prosecutrix aged

about 13 years minor was kidnapped/abducted from her lawful guardianship from Primary School at village Chavni by accused without consent of her parents for marriage. As per Ex. P-4 Rojnamcha, father of the prosecutrix lodged missing report that the prosecutrix went to her school and she did not return on 13/03/1995. As per seizure memo Ex. P-3 School record Dakhila Khariz Register was seized by Investigating Officer and he found the date of birth of prosecutrix as 10/02/1984. After the incident of missing of prosecutrix, on 04/07/1997 FIR was lodged by V.D. Pahade, S.H.O, Jamul. He found during investigation that both accused Ramesh and Gajratan @ Raju had abducted/kidnapped the prosecutrix from her lawful guardianship and forcibly committed sexual intercourse with the prosecutrix.

- 3) After due investigation charge sheet was filed against both the accused Ramesh Kumar and Gajratan @ Raju under Sections 363, 366, 376 and 34 of I.P.C.
- 4) The Trial Court framed charges against the accused Gajratan @ Raju under section 376 of IPC whereas appellant Ramesh Kumar was charged under sections 363, 366 and 376 of I.P.C., which were denied by the accused persons and they prayed for trial.
- 5) The prosecution in support of its case examined as many as 7 witnesses namely PW-01 (prosecutrix), PW-02 Parasnath (father of Prosecutrix), PW-03 Dr. G.S. Thakur, PW-04 V.D. Pahade, I.O., PW-05 R.P. Shukla, I.O., PW-06 Amarnath Tiwari, Head Constable, PW-07 Dr. Smt. Madhu Shrivastava. The statements of the accused were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implications. However, one witness DW-01 Munna Lal was examined by them in defence.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above and accused Gajratan @

Raju was convicted and sentenced under section 376 of IPC.

- 7) Learned counsel for the appellant submits that in this case on the similar set of evidence co-accused Gajratan @ Raju was acquitted by M.P. High Court as per judgment delivered on 17/09/1998 in CRA No. 1794/1998. In this case the age of prosecutrix was not proved to be below 16 years. As per Ossification test and evidence adduced by PW-03 Dr. G.S. Thakur he found that the age of prosecutrix was about 16 years and he also admitted in his deposition in para 2 and 3 that there can be variation of 3 years on either side of the age of the prosecutrix. No other evidence regarding the age of prosecutrix is adduced and as per findings of M.P. High Court in the matter of co-accused Gajratan @ Raju also the age of the prosecutrix was found not below 16 years and therefore, looking to the entire conduct of the prosecutrix that she was a consenting party, accused Gajratan @ Raju was acquitted. The same set of evidence is available on record against the accused/appellant in the instant appeal, therefore, the appellant also deserves to be acquitted.
- 8) As per the evidence of the prosecutrix herself she admitted that she was living with the accused Ramesh, visited different places with accused Ramesh from date of incident 13/03/1995 till FIR is lodged against the accused persons. As per the Court statement of the prosecutrix she also stated that accused had abducted her on the point of knife whereas it was not stated before the police when her statement (Ex. D-1) was recorded. Prosecutrix remained in the company of the appellant for a considerable period of two years, however, she was never protested or resisted while going with accused Ramesh from one place to another nor informed to anyone or police during this long period.
- 9) Learned counsel for the appellant submits that the appellant has been falsely implicated in this offence. According to the prosecutrix herself she remained with the appellant for considerable period of 2 years and during this period she visited

several placed with the appellant. However, during this period while she was moving here and there with appellant, she never protested or resisted the appellant or informed anyone or the police about her abduction /kidnapping/rape by the appellant. This apart, there are number of omissions/improvements in her statement as compared to her dairy statement. In her Court statement the prosecutrix has stated that she was abducted by the accused person on the point of knife whereas no such statement was given by her to the police.

- 10) He submits that on the similar set of evidence co-accused Gajratan @ Raju was acquitted by the High Court of M.P. vide judgment dated 17/09/1998 passed in CRA No. 1794/1998. In the said judgment the High Court considering the fact that age of the prosecutrix has not be proved to be below 16 years on the date of incident, as per Ossification test and the evidence of PW-03 Dr. G.S. Thakur that there can be variation of 3 years on either side of age of the prosecutrix, the conduct of the prosecutrix, acquitted the co-accused of the charge under section 376 of IPC. Therefore, on the same set of evidence, the appellant is also entitled to be acquitted of charges leveled against him.
- 11) On the other hand learned counsel for the respondent/State supports the impugned judgment and submits that the Trial court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 12) Heard counsel for the parties and perused the material available on record.
- 13) It is not disputed by the counsel for the State that co-accused Gajratan @ Raju has already been acquitted of the charge under section 376 of IPC by the High Court of M.P. vide judgment dated 17/09/1998 passed in CRA No. 1794/1998.

- 14) Indisputably, in the present case regarding the age of the prosecutrix except Ossification test, no other documentary evidence was adduced by the prosecution.
- 15) According to PW-03 Dr. G.S. Thakur, he found the prosecutrix 16 years of age and also admitted that there can be variation of 3 years on either side. Therefore, there is no any conclusive proof regarding the age of the prosecutrix that she was below 16 years on the date of incident.
- 16) PW-02 Parasnath, father of Prosecutrix also admitted in para 4 of his deposition that the prosecutrix was born in Uttar Pradesh and he has no knowledge about her date of birth.
- 17) As per the statement of the prosecutrix she was abducted from School when she was going to bring her examination result from School on 13/03/1995 but she admitted to have visited with accused many places at Tilda, Raipur, Nawapara and spent more than 1 year with accused without restraining or protesting his act. As per PW-07 Dr. Smt. Madhu Shrivastava when prosecutrix was brought before her on 04/07/1997 she was pregnant but no any injury was found on the body of the prosecutrix. Prosecutrix also admitted in paras 7, 8 and 9 that she visited many places with the accused including the densely populated area also but she never made any complaint to anybody regarding the abduction by the accused. No any FIR was lodged by the prosecutrix nor any explanation given by the prosecutrix regarding the 2 ½ years delay. The prosecutrix had run away with the accused from her house in 1995 and she returned in 1997. As per the statement of the prosecutrix she was happily living with the accused for more than 1 year and thereafter she was living with the co-accused. However, during this period she did not make any protest or lodge any report or complain against the accused persons whereas she had ample opportunity to do so.
- 18) Thus considering the facts and circumstances of the case, the manner in which the incident is set to have taken place, the

nature and quality of evidence adduced by the prosecution regarding the age of the prosecutrix, the conduct of the prosecutrix during relevant period, this Court is of the opinion that the prosecution has failed to prove that the prosecutrix was below the age of 16 years on the date of incident and it appears that the prosecutrix was consenting party to the act of sexual intercourse committed by the appellant. In these circumstances, the Trial Court was not justified in convicting and sentencing the appellant under sections 363, 366 and 376 of IPC.

- 19) In the result, the appeal is allowed. The appellant is acquitted of the charges under sections 363, 366 and 376 of IPC. He is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provision of section 437-A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant