

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 388 of 2002**

Mohd. Rakeeb S/o Gulam Rasul, aged about 30 years, Occupation Business,
R/o Village Mominpura (Abmikapur), P.S. Ambikapur, Distt. Surguja (C.G.)

----Appellant

Versus

State of Chhattisgarh Through P.S. Ambikapur, Distt. Surguja (C.G.).

---- Respondent

For Appellant	:	Mr. Sushil Dubey, Advocate
For Respondent	:	Mr. Shubham Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

23/10/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 02/04/2002 passed in Sessions Trial No. 172/1995 by the Second Additional Sessions Judge, Ambikapur, Distt. Ambikapur (C.G.) convicting the Appellant under Sections 363 & 366 of the Indian Penal Code and sentenced him to undergo RI for 01 year and RI for 3 years. Both the sentences were directed to run concurrently.
2. Facts of the case are that on 21/03/1995 at about 3:00 pm, younger sister of the Complainant (who was minor) was standing in front of her house along with her sister Sangeeta and brother Bhola. It is alleged that the Appellant came there by a Maruti Van and forcibly pulled the Prosecutrix in his van, and taken her towards Darima. Subsequently, the Appellant was caught hold with the help of villagers. Thereafter, FIR Ex.P-3 has been lodged by the brother of the Prosecutrix. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After

completion of investigation, a charge-sheet has been filed. Trial Court framed the charge under Section 363 and 366 of the IPC. As many as 12 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. It is further submitted that the Prosecutrix in this case has not been examined and eye-witnesses namely Bhola (PW6) and Sangeeta (PW10) have not supported the case of the prosecution and have turned hostile. Though, Indresh (PW2) and Ramesh (PW3), brothers of the Prosecutrix have stated against the Appellant, they are not eye-witnesses of the incident and they have not seen the incident, therefore, the trial Court has wrongly convicted the Appellant on the basis of their statements.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In his Court statement, Indresh (PW2) brother of the Prosecutrix has

deposed that on the date of incident, younger brother of the Prosecutrix namely Bhola (PW6) came to him at his work place situated at Ambikapur and informed that the Appellant has forcibly taken the prosecutrix with him. Thereafter, he lodged FIR (Ex.P.-3). He further deposed that near village Kargi, one Maruti van was found and they recovered the Prosecutrix and her nephew. He further deposed that thereafter the Prosecutrix disclosed him that when she was standing with Sangeeta, the Appellant came there and forcibly taken her in his Maruti Van. This witness has categorically admitted the fact that he had not seen the incident. Likewise, Ramesh (PW3), another brother of the Prosecutrix has also admitted that while hearing noise the Prosecutrix has been abducted, he had gone to village Kargi, where the villagers had already caught the Appellant. In para 4 of his cross-examination, this witness has admitted that when he reached to the spot, Maruti van has gone. From the above, it is well established that no incident has been taken place in front of these witnesses. Moreover, eye-witnesses namely Bhola, younger brother of the Prosecutrix and Sangeeta (PW10) have not supported the case of the prosecution and have turned hostile.

8. On minute examination of above evidence available on record, it is clear that the Prosecutrix in this case has not been examined and eye-witnesses namely Bhola (PW6) and Sangeeta (PW10), both have turned hostile and have not supported the case of the prosecution. Other witnesses of the case are not eye-witnesses of the incident and in front of them, no such type incident has taken place. Therefore, there is nothing on record on the basis of which it can be said that the Prosecutrix was abducted by the Appellant. Thus, the finding of the trial Court in this

regard is not in accordance with law, therefore, the impugned order dated 02/04/2002 passed in Sessions Trial No. 172/1995 by the Second Additional Sessions Judge Ambikapur, Distt. Surguja is quashed.

9. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. It is reported that the Appellant is on bail. His bail bond be discharged.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge