

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1973/2000

Reserved on 3-1-2019

Delivered on 4-1-2019

(Arising out of judgment of conviction and order of sentence dated 31-7-2000 passed by 3rd Additional Sessions Judge, Raipur (MP) (now CG) in ST No. 96/2000)

...

Vinay Kumar alias Rintu son of Shatrughan Prasad Shrivastava, aged 21 years, Adityapur 2, Pashchim Sinhbhum Sadak No. 11, P.S. R.I.T., Tata Bihar

Appellant

VERSUS

State of Chhattisgarh through P.S. Purani Basti, Raipur (CG)

Respondent

For Appellant : Ms. Meenu Banerjee, Adv.
For Respondent : Shri Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 31-7-2000 passed by 3rd Additional Sessions Judge, Raipur (MP) (now CG) in ST No. 96/2000 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction under Section	Sentence	Fine sentence
363 IPC	RI for 2 years	Rs. 200/-, in default of payment of fine RI for 1 month

2. In brief the prosecution case is that prosecutrix was a resident of Aminpara, Purani Basti, Raipur. She was 12 years old at the time of incident. On 30-11-1999 she had gone for tuition but did not return back to her house. Thus, her father P.W. 1 Vijay Kumar Sharma intimated police station Purani Basti where report of missing person was lodged. During

search she was found in a guest house of Adityapur, Tata Nagar on 3-12-1999. A Dehati Nalishi was lodged. During investigation, it was found that the appellant and co-accused Kamlesh had taken her to Tata Nagar by enticing her on pretext of marriage and committed sexual intercourse with her and gave threatening to kill her. Thereafter on 5-12-1999 an FIR was lodged in police station Purani Basti, Raipur. After the investigation a charge sheet was filed against the appellant and co-accused Kamlesh under Sections 363, 366, 376, 506-B/34 of the Indian Penal Code (in brevity 'IPC'). The trial Court framed charge against the appellant under Section 363, 366 and 376(1), IPC. Co-accused Kamlesh was declared absconded. Appellant abjured the charges and faced trial. To bring home the charges prosecution examined as many as 11 witnesses. He did not examine any witness in his defence. After conclusion of the trial, trial Court acquitted him of the charge punishable under Section 366 and 376(1) of the IPC however convicted and sentenced the appellant as aforesaid.

3. Being aggrieved from aforesaid conviction and sentence, the appellant has preferred this criminal appeal.

4. Ms. Meenu Banerji, counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Therefore, the impugned judgment of conviction and order of sentence being bad in law may be set aside and he may be acquitted of the aforesaid charge.

5. On the other hand, Mr. Suryakant Mishra, Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

6. P.W. 1 Vijay Kumar Sharma who is father of the prosecutrix says in para 5 of his statement given on oath that the prosecutrix had told that the

appellant and his friend had taken her by enticing.

7. P.W. 9 Anil Kumar Sharma who is the maternal uncle of the prosecutrix says in para 1 of his statement given on oath that prosecutrix had told that the appellant had taken her.

8. P.W. 8 Prosecutrix does not support the prosecution case regarding appellant. She does not say as per the prosecution case that the appellant had taken her by enticing on pretext of marriage. Instead of it, she says in para 4 that she does not know appellant, she had not seen him earlier. He had not committed anything with her. In these circumstances, this Court disbelieves aforesaid statements of P.W. 1 Vijay Kumar Sharma, P.W. 9 Anil Kumar Sharma in the reference that the appellant had allegedly taken prosecutrix by enticing her.

9. After the appreciation of the evidence discussed herebefore this Court finds that prosecution failed to prove beyond reasonable doubt the charge punishable under Section 363, IPC. Thus trial Court has committed gross illegality in convicting and sentencing the appellant as aforesaid.

10. Hence, the appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charge punishable under Section 363 of the IPC giving him benefit of doubt. The fine amount of Rs. 200/- if deposited by the appellant be refunded to him after expiration of the prescribed period for further legal remedy available to the parties.

11. The appellant is reported to be on bail. His bail and bond are cancelled subject to provisions of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge