

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-4-2019****Pronounced on 29-4-2019****CRA No. 71 of 2000**

(Arising out of judgment of conviction and order of sentences dated 27-11-2000 passed by the 2nd Additional Sessions Judge, Raigarh CG in ST No. 153/1997).

1. Parasuram son of Chhotesoma age 54 years occupation Agriculturist, resident of Kera Kachhar, P.S. Patthalgaon, distt. Raigarh.
2. Samil (since deceased)

---- Appellants**Versus**

State of Chhattisgarh through PS Patthalgaon, Distt. Raigarh (CG)

---- Respondent

For Appellant No. 1 : Mr. Vineet Kumar Pandey, Adv.
 For State : Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, J**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentences dated 27-11-2000 passed by the 2nd Additional Sessions Judge, Raigarh CG in ST No. 153/1997 whereby and whereunder he has convicted and sentenced the appellant No. 1 as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
363/34, IPC	3 Years	500/-	6 months
366/34, IPC	7 Years	500/-	6 months
342/34, IPC	1 Year	-	-

All the jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was minor. She was resident of village Kerakachhar. On 27-12-1996 at about 1.30 pm at village Kerakachhar co-accused Gabriel Kindo, Syprial Kindo, Habil Kindo took prosecutrix and confined her in the house of co-accused Habil Kindo. Thereafter prosecutrix returned back in her parental house. On 28-12-1996 co-

accused Mikhel Kindo, Gabrial Kindo, Parasu Kindo, Samil Uraon and Santosh Kindo reached to the house of the prosecutrix and took her again, co-accused Habil Kindo committed repeatedly sexual intercourse with her. Brother of the prosecutrix Suklal Bakhla gave an application to SHO, PS Patthalgaon. Thereafter an FIR was lodged in PS Patthalgaon. After completion of the investigation, a charge sheet was filed against the appellants and other co-accused. Some co-accused were absconding. The trial Court framed the charges against appellants under Sections 363/34, 366/34, 342/34 of the Indian Penal Code (in brevity 'IPC'). Appellants and co-accused Habil Kindo abjured the charges and faced the trial. To bring home the charges against them, the prosecution examined as many as 15 witnesses. They did not examine any witness in their defence. After conclusion of trial, the trial Court convicted and sentenced the appellant No. 1 as mentioned above. Trial Court also convicted and sentenced appellant No. 2. However, the trial Court acquitted co-accused Habil Kindo for the offences punishable under Section 363/34, 376/34 and 342, IPC.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentences, the appellants have preferred this criminal appeal.

4. During the pendency of this criminal appeal, as appellant no. 2 Samil uraon expired, his appeal abated vide order dated 9-10-2018. Thereafter, this appeal continued only for appellant No. 1 Parasuram.

5. Counsel for the appellant submits that the appellant has been falsely implicated. Trial Court has not properly appreciated the evidence available on record in proper perspective. Therefore, the impugned judgment of conviction and order of sentences may be set aside regarding the appellant and he may be acquitted of the charges.

6. On the other hand, the Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence the appeal may be dismissed.

7. P.W. 1 Prosecutrix says in para 13 and 14 that at the second time appellant and deceased appellant Samil Uranv also came to her house along with other co-accused, and she was taken forcefully by them.

8. P.W. 3 Suklal Bakhla who is brother of the prosecutrix says in para 2 of his statement given on oath that next day co-accused

Santosh, Mikhel, Gabrial, Habil, appellant, deceased appellant Samil had taken her sister by giving threatening.

9. P.W. 5 Ramlal says in para 1 and 2 of his statement given on oath that in the meeting co-accused Mikhel, Habil, Santosh, Gabrial, appellant Parsuram and deceased appellant Samil quarrelled. They asked that if the prosecutrix is not handed over then they will kill them.

10. P.W. 12 Anita Bakhla says in para 2 of her statement given on oath that from the panchayat co-accused Habil, Gabrial and their family members, appellant Parsuram, deceased appellant Samil had taken forcefully prosecutrix.

11. P.W. 13 Sushil says in para No. 2 of his statement given on oath that from the meeting co-accused Habil, his family members, appellant Parsuram, deceased appellant Samil had taken forcefully prosecutrix.

12. P.W. 1 Prosecutrix, P.W. 2 Shaniram, P.W. 3 Suklal Bakhla, P.W. 4 Sonmati, P.W. 5 Ramlal, P.W. 12 Anita Bakhla, P.W. 13 Sushil do not say clearly and strongly that at the time of first alleged incident, appellant was also present and had done some act. Moreover, P.W. 1 prosecutrix says in para 13 during her cross-examination that at the first time, appellant was not along with other co-accused, P.W. 2 Saniram says in para 12 during his cross-examination that this is true that her daughter was taken by co-accused Habil and Santosh, no other person was along with them, P.W. 4 Sonmati who is mother of the prosecutrix says in para 5 during her cross-examination that this is true that her daughter was taken by co-accused Gabrial and Santosh, no other family member of co-accused Habil nor any other person had taken the prosecutrix, P.W. 6 Sagar Tirki says in para 4 during his cross-examination that prosecutrix had gone to the house of co-accused Habil voluntarily, appellant Parsuram and deceased appellant Samil had not taken prosecutrix forcibly, P.W. 7 Salu Bada says in para 4 during his cross-examination that in the panchayat no forcible act was done, appellant Parsuram and deceased appellant Samil had not taken prosecutrix from her house, they had not confined her, P.W. 8 Ghasiaram says in para 3 during his cross-examination that in the panchayat prosecutrix had told that there is love affair between her and co-accused Habil, she had gone in his house voluntarily, she wants to live with him voluntarily.

13. Earlier while deciding the case against the co-accused Habil Kindo trial Court had given the finding that at the time of alleged incident, prosecutrix was more than 18 years of age and she was a consenting party.

14. Looking to the above-mentioned facts and circumstances of the case, this Court disbelieves aforesaid statements of para 13 of P.W. 1 prosecutrix, para 2 of P.W. 3 Suklal Bakhla, para 1 and 2 of P.W. 5 Ramlal, Para 2 of P.W. 12 Anita Bakhla Para 2 of P.W. 13 Sushil that appellant Parsuram had taken prosecutrix or he done something in furtherance of common intention.

15. After the appreciation of the evidence discussed herebefore this Court finds that prosecution failed to prove beyond reasonable doubt the charges punishable under section 363/34, 366/34, 342/34 of the IPC. Thus, trial Court committed illegality in convicting and sentencing the appellant. Hence, the aforesaid conviction and sentences of appellant are hereby set aside. He is acquitted of the charges punishable under Section 363/34, 366/34, 342/34 of the IPC after giving the benefit of doubt.

16. The fine amount as awarded by the trial Court, if so deposited by the appellant Parsuram, be refunded to him after expiration of the further legal remedy available to the party.

17. Appeal is allowed.

18. Appellant is reported to be on bail. His bail and bonds shall continue for a further period of six months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge