

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1534 of 1999

Order reserved on 28.08.2019

Order pronounced on 11.12.2019

1. Jivan Son of Hariram Sahu, aged about 50 years,
2. Chanda Bai, wife of Kamod Singh Sahu, aged about 25 years,
3. Billu @ Balwant Singh, Son of Jurrisingh Gond, aged about 32 years (**Died**).

[Appellants Nos. 1 to 3 all resident of village Amarpur, Police Station Pendra, District Bilaspur, MP. (Now CG)]

4. Baniya son of Durga kachhi, aged about 30 years, resident of village Kishorepura, Police Station Joura, District Muraina, MP.(Now CG)

---- Appellants

Versus

State of MP (Now Chhattisgarh) through the Police Station Pendra, District Bilaspur, MP. (Now CG). **---- Respondent**

For Appellants	: Shri N.K. Jaiswal, Advocate
For State/ Respondent	: Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

Challenge in this appeal is to the judgment impugned dated 22.04.1999 passed by the Additional Sessions Judge, Bilaspur, Link Court, Pendra Road in ST No. 103/97, convicting and sentencing the accused/appellants as under:-

Sr.	Conviction	Sentence with fine
1.	U/s 376 IPC	7 years RI with fine of Rs. 1,000/-, in default of fine RI for 1 year to the appellant No.4.
2.	U/s 366 IPC	5 years RI with fine of Rs. 1000/-, in default of fine further RI for 1 year to the appellants No. 1, 2 and 3.
3.	U/s 343 IPC	RI for 6 months with fine of Rs. 800/- in default of fine further RI for 1 month to the appellant Nos. 1 and 2 only.
		All the jail sentences have been directed to run concurrently.

2. Prosecutrix (PW-1) first was married to one Raysingh and thereafter started living with one Naryan Pandit to whom she even became pregnant.

Facts of the case in brief may be narrated thus:-

3. On 21.10.1996 at about 5 PM the prosecutrix (PW-1), according to the case of the prosecution, had gone to watch Dussehara festival but did not return home, nor was located even after extensive search. However, on 06.11.1997 (it should have been 06.11.1996) she returned home and on being asked by her father Sukhdev (PW-2) she disclosed to him that accused Chanda first allured her of getting her married to a rich person but she ignored her proposal. Thereafter, accused/appellant Chanda took her to village Amarapur where accused Billu and Jivan were also present and confined her in a house for 7 days without permitting her to get out of the house. Thereupon, she was taken by them to village Jorabhind in a train and sold her out to accused/appellant Baniya for Rs.10,000 who too kept her with him for about 7 days and during this period he made physical relations with her. Subsequently, she somehow wriggled out of the custody of accused Baniya, came back to her house and narrated the entire incident to her father (PW-2) who eventually lodged FIR (Ex.P-2). After completion of investigation including medical examination of the prosecutrix, *challan* was filed against the accused/appellants followed by framing of charge under Section 376 against accused Baniya; under

Sections 366 and 343 of IPC against accused Jivan, Chanda Bai and Billu. Accused Billu however died during pendency of appeal and the appeal on his behalf has already abated.

4. Learned Court below by the judgment impugned found the charges fully proved and thus convicted and sentenced the accused/appellants as mentioned above. Hence this appeal.

5. Counsel for the accused/appellants submits that the prosecutrix was a consenting party to the act of the accused/appellants and therefore, they deserve to be acquitted of the charges levelled against them. State counsel however supports the judgment impugned.

6. Though the prosecutrix (PW-1) – a married woman has stated that when she first refused the proposal of accused Chanda for getting her married to a rich person, she took her to village Amarapur where accused Billu and Jivan were already present, and confined her in a house for about 7 days. It appears a bit strange for this Court to place implicit reliance on the statement of the prosecutrix – a fully grown-up married lady, for the reason that while being taken thereto number of passers-by must have come across but she did not call out anyone for help for narrating her woes of being taken perforce. Had she not been agreeable to this act of accused Chanda, she would have attracted the attention of the people on the way, but there is nothing on record to show that she made any complaint to anyone regarding being taken away against her wishes. Subsequently, she states that from Amarapur she was taken to village Jorabhind in a train and was sold out for Rs.10,000 to accused Baniya who also made her captive for about 7 days and all along this period he continued making physical relations with her. Same analogy applies to this part of the story put-forth by her also. At least to the co-passengers she could have informed her miseries of being taken away by accused/appellants Jivan, Chanda and Billu but here also she maintained a graveyard silence and did not make

any effort to come out of their clutches. Not only this, she did not make any effort to make any disclosure of being sold out to accused Baniya nor did she tried to set her self free immediately. Medical examination of the prosecutrix vide report Ex.P-12 does not opine anything of the recent sexual intercourse with her. This is but natural in view of the fact that she is a married lady. On the memorandum of accused Chanda Ex.P-3, seizure of Sari and Petikot was made under Ex.P-4 but the seizure witness (PW-9) has not supported the case of the prosecution and has turned hostile. Head Mistress (PW-8) is the witness who issued the certificate mentioning date of the prosecutrix as 05.07.1978. If the statement of this witness is considered, she undisputedly was above 18 years on the date of incident. Furthermore, a duly notarized stamped paper (Ex.D-1) signed by two witnesses is also there to show that the prosecutrix was married to accused/appellant Baniya. Though she has denied her signature on the document of Ex.D-1 yet in her cross examination she has stated that the joint photograph of herself and Baniya affixed on the said document was snapped in the studio together. Thus the prosecution has not been able to establish its case beyond reasonable doubt and for that the benefit has to go to the accused/appellants.

7. The Court below has thus drawn a wrong conclusion in convicting and sentencing the accused/appellants under various sections described above without considering the evidence adduced by the prosecution in proper perspective. The accused/appellants in fact are entitled to receive the benefit of doubt and extending them the same, the judgment impugned is hereby set aside and the appeal stands allowed. The accused/appellants are reported to be on bail, therefore, the bail bonds furnished by them stand discharged.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/ajay