

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26-11-2019
 Delivered on 17-12-2019

CRA No. 123 of 2009

- Nasir Khan s/o. Mohammad Ishak Khan @ Dallu, aged about 23 years, r/o. Nayapara, Mahasamund, present address village Jhalap, Thana Pithaura, District Mahasamund, Chhattisgarh.

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Pithaura, District Mahasamund, Chhattisgarh

---- Respondent

 For Appellant : Mr. K.K. Dewangan, Advocate
 For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 3-1-2009 passed by the Sessions Judge, Mahasamund, CG in Sessions Trial No. 53 of 2008 wherein the said Court has convicted the appellant for commission of offence under Sections 363 & 366 of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- and RI for four years and fine of Rs.2000/- respectively with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, prosecutrix was minor on the date of incident i.e., 18-8-2008 and the appellant in order to get married her made undue compulsion on her and took her from village Jhalap and kept her in village Abhanpur, District Raipur. Father of the prosecutrix lodged report on 19-8-2008 and thereafter case was registered and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Prosecutrix herself has not supported version of the prosecution and her age is not proved to be below 18 years on the date of incident, therefore, finding of the trial court is not liable to be sustained.
- ii Version of other witnesses is also not sufficient to record finding of guilt against the appellant, but the trial court recorded finding contrary to the evidence adduced by the prosecution, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the

finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The first question for consideration of this court is whether the prosecutrix was below 18 years on the date of incident i.e., 18-8-2008. Sumer Singh (PW/2) is father of the prosecutrix, but he did not depose regarding date of birth of the prosecutrix. PW/3 Lalita Bai is mother of the prosecutrix and she is also unable to state the date of birth of the prosecutrix. Smt. Aasha Nishad (PW/6), Head Master deposed that in school register of Government Primary Girl School, Jhalap, date of birth of the prosecutrix is mentioned as 8-5-1991. This witness has admitted in cross examination that she was not posted in the school on the date of entry made in the school register. No one was examined who admitted the prosecutrix in the school and author of the register is also not examined. In absence of statement of the author and person who admitted the prosecutrix in school, entry in school register is not proved. There is no other evidence like birth register or radiological examination to ascertain age of the prosecutrix. From the evidence adduced by the prosecution, it is not established that prosecutrix was below 18 years of the age on the date of incident.

7. Prosecutrix (PW/1) deposed before the trial court that the appellant induced her to marry that is why she visited to village Abhanpur with him. This witness has not deposed in her examination-in-chief that appellant maintained physical relation with her. She admitted (para 8) that she was sitting with the appellant in bus stand and stayed with him for two days at village Abhanpur but she did not narrate to parents of the appellant regarding inducement by the appellant. Staying with the appellant without having any complaint shows that appellant did not seduce her for marry or for illicit intercourse. Minority of the prosecutrix is not proved, therefore, it is not a case for taking the prosecutrix from lawful guardianship of her parents. On an over-all assessment, it is difficult to hold that the material available on record is sufficient to establish charge under Sections 363 and 366 of IPC.

8. Accordingly, the appeal is allowed. Conviction and sentence awarded to the appellant is hereby set aside. He is acquitted of the charge under Sections 363 and 366 of the IPC. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju

