

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 372 of 2012**

Vimal @ Pappu, S/o Shri Beniram Sahu, aged about 28 years, R/o Village Chicha, P.S. Arjunda, District- Balod (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through P.S. Gurur, District- Durg (C.G.)

---- Respondent

 For Appellant : Mr. Rajat Agrawal, Advocate on
 behalf of Mr. S.C. Verma, Advocate.
 For State/respondent : Mrs. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

03/01/2019

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 by the present appellant- Vimal @ Pappu against judgment dated 03.04.2012, who has been convicted under the said judgment by the court of Additional Sessions Judge, Balod, District- Durg (C.G.) in Session Trial No. 101/2011, wherein the said court convicted the present appellant for commission of offence under Sections 363, 366(A) & 368/34 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 50/- on each count with further default stipulations. All the sentences are run concurrently.
2. In the present case, prosecutrix is PW-6. It is alleged that the present appellant- Vimal @ Pappu in furtherance of common intention with other co-accused- Shital taken the prosecutrix to Village- Chicha and thereafter Bhilai, who was a minor girl.

Matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) As per version of the prosecutrix, the present appellant-Vimal @ Pappu did not take her from her lawful guardianship and again, she has not been kidnapped or abducted by the present appellant. She further submits that the present appellant has never wrongfully concealed or confined the prosecutrix, therefore, no offence is made out against him.

(ii) The trial court has overlooked the evidence of the prosecutrix in which she deposed that she willfully gone to the house of the present appellant to see him because the present appellant sustained burn injuries due to electric current.

(iii) As per version of the prosecutrix, when she willfully went to the house of the present appellant, there is nothing on record to establish that she has been taken or enticed away by the present appellant or she has been wrongfully concealed or confined by the present appellant. Therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. In the present case, the prosecutrix is PW-6. As per version of the prosecutrix, it is co-accused namely Shital who taken her from lawful guardianship to the house of one Khemlal. From evidence of the prosecutrix (Para 10), it is clear that the co-accused- Shital and the prosecutrix had gone to the house of the present appellant willingly to see him. She further deposed (Para 17) that the present appellant sustained burn injuries due to electric current that is why they had gone to see him where co-accused-Shital treated him. She further deposed that she made conversation with the present appellant for the first time at Village- Chicha.
6. True it is that the present appellant accompanied with the co-accused- Shital in a motor-cycle, but the same is not sufficient to establish that the present appellant had common intention with co-accused-Shital for taking away the prosecutrix or enticed her. There is no evidence that the present appellant induced the prosecutrix to do any act or knowing that it is likely to seduced the prosecutrix to commit illegal intercourse. Again, there is no evidence that the present appellant has wrongfully concealed or confined the prosecutrix.
7. After reassessing the entire evidence on record, this Court is of the opinion that the basic ingredients for commission of offence under Section 363, 366 (A) & 368/34 of IPC is lacking, therefore, finding arrived at by the trial court is not sustainable.

8. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 363, 366(A) & 368/34 of IPC.
9. It is reported that the present appellant- Vimal @ Pappu has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge