

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.465 of 2011

Judgment Reserved on : 26.8.2019

Judgment Delivered on : 25.11.2019

Vishnu Nandi, S/o Sapan Kumar Nandi, aged 22 years, R/o Indera Para,
Bhilai-3, District Durg, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Police Station G.R.P. Bhilai, District Durg,
Chhattisgarh

--- Respondent

For Appellant : Shri J.K. Gupta, Advocate on behalf of
Shri Devershi Thakur, Advocate
For Respondent/State : Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 29.3.2011 passed by the 8th Additional Sessions Judge (FTC), Durg in Sessions Trial No.71 of 2010, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 366 of the Indian Penal Code	Rigorous Imprisonment for 4 years and fine of Rs.1,000/- with default stipulation
Under Section 368 of the Indian Penal Code	Rigorous Imprisonment for 4 years and fine of Rs.1,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 17.7.2009, Dungermal

Jain (PW13), father of the prosecutrix (PW4) lodged a missing report regarding missing of the prosecutrix that she was missing from 16.7.2009. It was reported that the prosecutrix and her mother had gone to Dr. Sona George. After sometime, the prosecutrix, who was about 22 years of age, came out of the clinic and disappeared. On being inquired, it came to know that she had gone away in a Maruti Van. During inquiry proceedings, relatives of the prosecutrix expressed their doubt on the Appellant. On 30.7.2009, police found the Appellant at the railway station. On being inquired, he told the police that he had hidden and kept the prosecutrix at the house of Premdayal Pandey (PW2) at Adityanagar, Durg. The police went there and recovered the prosecutrix vide Ex.P11A. Thereafter, as informed by the prosecutrix, Dehati Nalishi (Ex.P1) was recorded. On the basis of Ex.P1, First Information Report (Ex.P14) was registered. On completion of investigation, a charge-sheet was filed. Charges were framed against the Appellant.

3. In support of its case, the prosecution examined as many as 16 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. 2 witnesses N.R. Gayakwad (DW1) and Ganesh Nayak (DW2) have been examined in defence of the Appellant. It was the defence of the Appellant that there was a love relationship between him and the prosecutrix and both of them wanted to marry each other and they had also submitted a joint application before the District Magistrate for their registered marriage. Due to their love relationship, the prosecutrix herself left the company of her parents and she was living with him

with her own consent at a rented house.

4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that without there being sufficient evidence on record against the Appellant, he has wrongly been convicted by the Trial Court. From the statement and admissions made by the prosecutrix (PW4) and N.R. Gayakwad (DW1), it is clear that there was a love relationship between the Appellant and the prosecutrix and, therefore, she herself was living with the Appellant with her own consent. Both of them had applied for their registered marriage and before the date fixed for their registered marriage she left her parents due to pressure created by her parents and she was living with the Appellant with her own consent. Therefore, no case is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State opposed the above arguments and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that on the relevant date, age of the prosecutrix (PW4) was about 22 years. Now, she is a married woman. In her Court statement, she has stated that on 16.7.2009, she along with

her mother and younger brother went to Dr. Sona George for her acupuncture treatment. She has further stated that the doctor was telling a story to a patient. Having heard the story she feared and, therefore, she came out of the clinic and started walking. At that time, she was under depression. The Appellant came there with a Maruti Van and asked her to leave her house. She sat in the said Maruti Van. The Appellant took her towards Durg and shut her inside a room. He told her that he loved her and wanted to marry her. He also told her that if she refuses to marry him, he will commit suicide. Thereafter, he bolted the room from outside and went away. She has further deposed that during the period she resided in the said room, the Appellant continued to threaten her and was not allowing her to go out of that room. During cross-examination, she has stated that whenever he went out of the room, he tied up her hands and put a lock on the door from outside. When she went to attend the call of nature, he covered her head with a cloth. She lived in the said room for 13 days. During that period, he used to visit her in the said room in the day hours once or twice. She has admitted the fact that when he had come to her with a Maruti Van and asked her to come with him, she had gone with him in the said Maruti Van. She has further admitted that at that time he had not threatened her in any way. She has further admitted that she had not raised any voice in the room where she was kept by the Appellant.

9. Smt. Vimal Jain (PW9), Ku. Chandan Jain (PW10) and Dungalmal Jain (PW13), mother, younger sister and father of the prosecutrix, respectively have only stated that the prosecutrix had disappeared from the doctor's clinic and later on she was recovered from the

house of Premdayal Pandey (PW2).

10. Nilesh Kumar Bothra (PW15) and Manish Jain (PW16) have deposed that on 30.7.2009 police came to know that the Appellant had hidden the prosecutrix. On this, both of them went along with police and in presence of the police officials they obtained key of the room from the Appellant and opened the door of the room and recovered the prosecutrix from there. Both these witnesses have admitted that at that time the prosecutrix was not tied up.
11. Premdayal Pandey (PW2) is the witness in whose house the Appellant had kept the prosecutrix. He has deposed that the Appellant had come to him along with the prosecutrix and demanded for a room saying that he had married the prosecutrix and both were living at his house. He has further deposed that father of the prosecutrix and 4-5 other persons came to him and took the prosecutrix back and thereafter the police officials reached there. Then he came to know that the Appellant had abducted the prosecutrix and brought her to his house. This witness has further deposed that the Appellant and the prosecutrix were living happily at his house and no disputed arose between them. The prosecutrix was also giving tuition to his children. He has further admitted that when the parents of the prosecutrix were taking the prosecutrix from his house, he had asked them to take her back after arrival of the Appellant, but they did not agree and took the prosecutrix back with them.
12. N.R. Gayakwad (DW1), Assistant Grade-II of the office of the

Collector, Durg has deposed that the Appellant and the prosecutrix had jointly applied for their registered marriage on 26.6.2009 and on the basis of which case No.180/2009 was registered. The joint application contained photographs of the Appellant and the prosecutrix and the application was also supported by their affidavits. He has further deposed that an order-sheet was recorded on which both had put their signatures. For their marriage, date of 7.8.2009 was given, but on that date, they did not appear and, therefore, the said marriage application was rejected.

- 13.** On a minute examination of the evidence available on record, it is clear that though the prosecutrix has stated that the Appellant had forcibly taken her along with him and kept her shut in a rented room for 13 days, her statement is not reliable because from the admission made by her it is clear that she herself went out of the clinic of Dr. Sona George and she herself willingly went away along with the Appellant. At that time, neither the Appellant threatened he nor did she resist him. As stated by Premdayal Pandey (PW2), the Appellant and the prosecutrix had taken a room at his house telling him that they were husband and wife. He has also deposed that both lived at his house happily. No dispute arose between them. The prosecutrix was also giving tuition to his children. From the statement of N.R. Gayakwad (DW1), it is also established that there was a love relationship between the Appellant and the prosecutrix and both had also applied for their registered marriage. Considering the entire evidence available on record, it is well established that due to love relationship between them, the prosecutrix herself went away along with the Appellant and resided along with him with her own consent. In these circumstances, the

finding of the Trial Court is not in accordance with the evidence available on record. Thus, no offence is proved against the Appellant.

- 14.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him. Fine, if any paid, shall be refunded to the Appellant.
- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE