

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1024 of 2015

Ramesh Kujur, S/o Matturam Kujur, aged about 20 years, R/o Village- Karabel, P.S. Sitapur, District- Sarguja (C.G.), Present R/o Housing Board Colony, Vinobanagar, P.S. Chakradharnagar, District- Raigarh (C.G.)

---- Appellant

Versus

State of C.G. Through the Police Station Chakradharnagar, District- Raigarh (C.G.)

---- Respondent

For Appellant : Mr. Aman Kesharwani, Adv.
For State/respondent : Mr. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

16/10/2019

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 14.08.2013 passed by Additional Sessions Judge (F.T.C.), Raigarh (C.G.) in Sessions Trial No. 71/2011, wherein the said court convicted the appellant for commission of offence under Sections 363, 366 & 376(1) of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 3000/-, R.I. for 7 years and fine of Rs. 4000/- & R.I. for 10 years and fine of Rs. 5000/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-3. Kanhaiya Lal Dhimar (PW-4) is father of the prosecutrix. As per version this witness, age of the prosecutrix was about 16 years on the date of

incident i.e. on 02.04.2011. Version of this witness is supported by version of Dr. Sunil Ratre (PW-9) who conducted radiological examination of the prosecutrix and found that age of the prosecutrix was below 16 years on the date of incident and she was minor.

3. From evidence of the prosecutrix (PW-3), her father Kanhaiyalal Dhimar (PW-4) and her mother Brihaspati Bai (PW-5), it is established that the appellant taken the prosecutrix from her lawful guardianship without consent of such guardian which falls within mischief of kidnapping and punishable under Section 363 of IPC. The evidence on this count is unrebutted, therefore, finding of the trial court regarding Section 363 is not liable to be interfered with by this Court with invoking jurisdiction of the appeal.
4. From evidence of the prosecutrix (PW-3), the appellant taken and committed sexual intercourse with her without her consent. Version of this witness is unrebutted during cross-examination. From evidence of the prosecutrix, it can be inferred that the prosecutrix was kidnapped in order that she may be forced or seduced to illicit intercourse. There is nothing in statement of the prosecutrix that she was consenting party, therefore, charge under Section 366 and 376(1) of IPC is also established.
5. On overall assessment of the evidence, grounds raised in the appeal are not sustainable and conviction of the appellant by the trial court is hereby affirmed. The trial court awarded

sentence of 10 years for commission of offence under Section 376(1) of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence.

6. Accordingly, the appeal is liable to be and is hereby dismissed.
7. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun