

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1997 of 1999**

1. Govindram S/o Deshrath Gond, aged about 21 years,
2. Ratan Sahai, S/o Shri Tilak Sahi Gond, aged about 28 years,
3. Jai Singh, S/o shri Dashrath Gond, aged about 24 years,
4. Parbal Sahai, S/o shri Andhi Gond, aged aout 24 years,

All Residents of Village: Thakur – Podi, PS : Pathalgaon, District Jashpurnagar (Raigarh) (M.P) now (C.G.).

---- Appellants**Versus**

1. State of Madhya Pradesh Now Chhattisgarh, through District Magistrate Raigarh (M.P.) now (C.G.)

---- Respondent

For Appellants	:	Shri S.P. Sahu, Advocate.
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**25/07/2019****Judgment On Board**

- 1) This appeal is filed under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 11/06/1999 passed by First Additional Sessions Judge, Raigarh in Session Trial No. 194/97.
- 2) By this judgment impugned appellants Govindram, Ratan Sai, Jai Singh and Parbal Sai stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 366/34 of Indian Penal Code	R.I. for 3 years

- 3) No one appeared on behalf of the appellants, when the matter is called. In these circumstances, this Court is left with no other

option but to appoint the counsel through the High Court Legal Services Committee.

- 4) Shri S.P. Sahu, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri S.P. Sahu, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 5) Case of the prosecution in brief is that on the date of incident i.e. on 15/07/1997 about 09:00 AM when prosecutrix aged about 15 years minor was going towards Patrapali, Palidih for grazing of her goats, accused Govindram, Ratan Sai, Jai Singh and Parbal Sai kidnapped/abducted the minor prosecutrix without consent of her parents for marriage with Govindram. FIR Ex. P-5 was registered by Sub-Inspector A.D. Manikpuri for the offence under sections 363, 366 of Indian Penal Code, 1860 (in short "I.P.C.") in Crime No. 134/97 at P.S. Patthalgaon, District Raigarh. During investigation prosecutrix was recovered from custody of accused Govindram as per Ex. P-1 prepared by ASI, Spot Map Ex. P-2 was prepared by Patwari. After due investigation charge sheet was filed against above four accused under Sections 363, 366 and 34 of I.P.C.
- 6) The Trial Court framed charges against the accused appellants under sections 363, 366 read with section 34 of I.P.C. the appellants denied the charges and prayed for trial. The prosecution proved its case examined as many as 9 witnesses. The statements of the accused appellants were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implications. However, no witness was examined by them in their defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the

accused appellants as mentioned above.

- 8) Learned counsel for the appellants submits that age of prosecutrix was not proved by the prosecution beyond reasonable doubt, only as per Ex. P-6C Mark Sheet and Dakhila Kharij Register it cannot be conclusively held that she was minor on the date of incident because there is nothing on record to show as to on what basis age is recorded in Dakhila Kharij Register.
- 9) Learned counsel for the appellants also submitted that prosecutrix PW-03 in her examination-in-chief and cross examination not identified the accused Ratan Sai and Parbal Sai and she has never mentioned the name of the accused Ratan Sai and Parbal Sai in F.I.R. and they have not actively participated in the commission of offence, therefore, learned Sessions Judge wrongly convicted Ratan Sai and Parbal Sai without there being any evidence against them.
- 10) Learned counsel for the appellants also submits that marriage of the prosecutrix was already fixed with accused Govindram and since subsequently the father of the prosecutrix refuse to marry his daughter/prosecutrix with accused Govindram and accused Govindram insisting for marrying the prosecutrix, the accused appellants has been falsely implicated in this offence so that marriage of the prosecutrix could be solemnized with one Prem Narayan. The basic ingredients for attracting the offence under section 363 and 366 of IPC have not been proved by the prosecution. As per evidence of PW-07 Anil Kumar, driver of the vehicle bearing No. 3144 in which the prosecutrix was allegedly kidnapped, he has denied the fact that the prosecutrix was forcibly taken away by the accused appellants and stated that she willingly accompanied the accused persons in the said vehicle. In these circumstances the Trial Court was not justified in convicting the appellants under sections 363 & 366/34 of IPC.
- 11) Lastly he submits that the accused/appellants are young offender, have no previous conviction or any criminal incident,

therefore, the benefit of probation of offender may be given to the appellants.

- 12) On the other hand learned counsel for the respondent State supports the impugned judgment of the Trial Court. She further submits that as per prosecutrix PW-03 she duly identified accused Govindram and Jai Singh who were known to her since before. Age of prosecutrix is also proved by the authentic evidence of Dakhila Kharij Register and Mark Sheet which are maintained in School Register – public authority, therefore, there is no reason to disbelieve the date of birth i.e. 01/07/1982 as recorded in Ex. P-6 Halafnama Register Pathsala, Patrapali which bears the signature of father of the prosecutrix. Therefore, at the time of incident, prosecutrix was below the age of 16 years and she was kidnapped for the purpose of marriage with accused Govindram Singh. Therefore, learned Session Judge has rightly convicted all the appellants for the offence under sections 363 & 366/34 of IPC.
- 13) Heard counsel for the parties and perused the material available on record.
- 14) As per Ex. P-6C Progress Report for Class-V of prosecutrix date of birth is mentioned 01/07/1982. As per statement of PW-09 Sonsai Bhagat, the date of birth of prosecutrix mentioned in School Register is duly proved with the original register of the School Ex. P-6 wherein date of Birth is mentioned as 01/07/1982. As per Ex. P-6, the hand entry is made on the information of father of the prosecutrix. Since, in this case incident occurred on 15/07/1997, at the time of incident prosecutrix was below the age of 16 years and that there is no reason to disbelieve the documents maintained by the School Authority during the course of their business. Therefore, it is proved that the prosecutrix was below the 16 years of age at the time of incident beyond reasonable doubt proved.
- 15) Prosecutrix PW-03 has duly identified accused Govindram and Jai Singh and she stated in para 8 that she never narrated the

name of accused Ratan Sai and Parbal Sai to the Police. In Para 3 she has stated that she could not see as to how many persons were sitting in the Jeep in which she was forced to sit by accused Govindram and Jai Singh. She could identify only Govindram and his brother Jai Singh but could not identify the other persons sitting in the Jeep and that she did not see accused Ratan Sai and Parbal Sai in the Jeep. There is no other eye witness in this case who has identified accused Ratan Sai and Parbal Sai to be perpetrators of all the crime in question. PW-05 Santoshi has proved this fact that prosecutrix was abducted by some persons in a Jeep and prosecutrix was crying for help when she was abducted. PW-07 Anil Kumar driver of the vehicle Jeep also proved this fact that when prosecutrix was sitting in Jeep accused were also sitting on that Jeep. Therefore, prosecutrix below 16 years of age was abducted by Govindram and Jai Singh for purpose of marriage with Govindram, is proved by the statement of prosecutrix PW-03. Driver of the Jeep, Anil Kumar (PW-07) has also not identified accused Ratan Sai and Parbal Sai whether they were sitting in the Jeep or not. As per Ex. P-1 prosecutrix was recovered from house of Govindram and that fact is also proved by the prosecutrix in para 7 of her statement that marriage ritual was done in house of Govindram and she was also restrained for that ceremony. Thus considering the statement of the prosecutrix, the Trial Court was fully justified in convicting the accused/appellants Govindram and Jai Singh for committing the offence of kidnapping the prosecutrix for pressing her to marry accused Govindram.

- 16) However, considering the nature and quality of evidence available on record in respect of accused Ratan Sai and Parbal Sai in light of statements of the prosecutrix (PW-03) and the statements of Anil Kumar (PW-07) driver of the vehicle who have categorically stated that they did not see these accused persons in the Jeep and further considering the fact that no eye witness to the incident has been examined by the prosecution proving involvement of these appellants in the crime in question, this Court is of the opinion that the Trial Court was not justified in

convicting these appellants Ratan Sai and Parbal Sai for the offence under sections 363, 366/34 of IPC.

- 17) So far as evidence is concerned and counsel for the appellants submits that earlier marriage of the prosecutrix was fixed with accused Govindram but subsequently father of the prosecutrix refuse to marry the prosecutrix with Govindram and wanted to marry her with some other person. Therefore, accused Govindram abducted the prosecutrix to perform marriage with her. Therefore, considering the facts and circumstance of the case the giving rise to the incident, the fact that accused Govindram and Jai Singh are brothers, they are young offender having no previous conviction or criminal antecedent, the incident occurred whether back in the year 1997 matrimonial life, they have already remained in jail for more than 1 years, it would be expedient in the interest of justice that they may be sentenced to the period already undergone by them.
- 18) This Court finds substance in the above arguments of learned counsel for the appellants/accused in respect of quantum of sentence and therefore, his of the opinion of the ends of justice would be served if the appellants Govindram and Jai Singh are sentenced under sections 363, 366/34 of IPC to the period already undergone by them.
- 19) In the light the appeal is allowed in part. While acquitting accused/appellants Ratan Sai and Parbal Sai of the charges under sections 363, 366/34 of IPC, accused Govindram and Jai Singh are already guilty under the aforesaid sections and are sentence to the period already undergone by them. Since the appellants are reported to be on bail, their bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge