

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2327 of 1999

Raka @ Rakesh Masih Pal, S/o. Shri Jeevan Masih Pal, Aged about 24 years, R/o. Govindvam Bilaigarh, Tahsil Bilaigarh, District Raipur (C.G.)

---- Appellant

Versus

State of Madhya Pradesh

---- Respondent

For Appellant : Mr. Rahil Arun Kochar, Advocate.

For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

20.11.2019

Challenge in this appeal is to the judgment of conviction and order of sentence dated 01.07.1999 passed by the Additional Sessions Judge, Baloda Bazar District Raipu (C.G.) in Sessions Trial No. 128/1996, wherein the trial Court convicted the accused/appellant under Sections 336 and 366 IPC and sentenced him to undergo R.I. for 7 years and to pay fine of Rs. 1000 under Section 366 IPC, R.I. for 7 years and to pay fine of Rs. 1000/- under Section 363 IPC with default stipulations.

2. Case of the prosecution in brief is that on 26.04.1995 the complainant was out of his house. At about 2.00 PM when he returned his home his younger daughter Sitara Begam informed him that her elder sister Shannu Begam (the prosecutrix herein) was not present in the home and she went elsewhere. On suspicion, the complainant inquired about her daughter with Dhaniram Dewangan- friend of the appellant, he informed him that the appellant forcefully abducted his daughter Shannu Begam. On the next date on 27.04.1995, the complainant lodged the FIR Ex.P-3 against the appellant in Police Station. On investigation, it was found that prosecutrix was abducted by the appellant, who took her to his sister's house, where she was residing with appellant. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

3. In order to prove its case the prosecution has examined 12 witnesses in support of its case. Statements of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied his guilt and pleaded innocence and false implication in the case.

4. Counsel for the appellant submits that even if the entire case of the prosecution is taken as it is offences under Section 363 and 366 IPC are not made out against the accused/appellant as there is no legally admissible evidence either in respect of the age of the prosecutrix or that the accused/appellant allured her away on the pretext of marriage etc. He submits that the trial Court has erred in

not relying the statement of prosecutrix (PW-3) where she has specifically stated to be a major lady on the date of incident.

5. On the other hand, learned Panel Lawyer for the State has supported the finding of the trial Court.

6. I have heard learned counsel for the parties and perused the record.

7. As per testimony of PW-2 Bahar Ali, father of the prosecutrix that on 26.04.1995, when he returned to his home, he found her daughter missing and he lodged the FIR (Ex.P-3) on 27.04.1995 in police station Bilaigarh. Even the prosecutrix (PW-3) has stated in her testimony that being neighbour she new the appellant even prior to the incident and that he had never taken her away on the assurance of marriage but she herself had gone with him and started living as his wife. She has clarified that she herself had asked accused/appellant to get her married. The prosecution did not adduce any evidence on the contrary that the accused/appellant had ever allured or threatened her of entering in marriage with him. As regards age, according to the prosecutrix herself her date of birth is 01.05.1977 and if it is taken to be as it is, she on the date of incident was about 18 years of age. The prosecutrix went turn to state that on account of being fed-up with the tortuous attitude of her father she decided to accompany the accused/ appellant and live with him as his wife. Though her father has made number of allegation against the accused/appellant, looking to the clear cut statement of the prosecutrix alone in

favour of the appellant, all other things become useless. The prosecution has also not brought anything on record to show that the statement of the prosecutrix was as a result of any fear or pressure exerted on her from any quarter.

8. In view of the evidence discussed above, the findings recorded by the Court below holding the accused/appellant guilty under Section 363 and 366 IPC are set aside by allowing this appeal and consequently he stands acquitted all the charges levelled against him. Being already on bail, his bail bond stand discharged.

9. Appeal is thus allowed.

Sd/-

(Vimla Singh Kapoor)
JUDGE