

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3171 of 1999

Order reserved on 09.08.2019

Order pronounced on 12.09.2019

1. Prabhakar Korba, S/o Birajo Korba, aged about 21 years,
2. Baldev @ Lidra Korwa, S/o Kamlu Korwa, aged about 19 years,
3. Anand Korwa, S/o Jagannath Korwa, aged about 22 years,
4. Nindro @ Nindiya, S/o Shiv Kumar Korwa, aged about 20 years,
5. Easdor Lakra, S/o Basir Lakra (Oraon), aged about 25 years,

**All resident of Village Raikera, P.S. Bagicha District
Jashpur Nagar (CG) ---- Appellants**

Versus

**State of MP, through P.S. Bagicha, District Jashpur Nagar,
M.P. (Now CG) ---- Respondent**

For Appellant/s : Mrs. Indira Tripathi, Advocate

For State/Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

From the FIR (Ex.P-1) lodged by Devadhiram (PW-2) – the father of the prosecutrix (PW-1) goes to show that on 04.05.1998 at about 10 AM accused Prabhakar accompanied by his companions (rest of the accused/appellants herein) entered his house and dragged his minor daughter (hereinafter referred to as prosecutrix) by hair to his house and kept her in confinement upto 4 PM. After keeping her in his house, Prabhakar went away by putting the remaining accused on guard outside. FIR also shows that when inmates of the house protested this act of the accused Prabhakar, he also grappled with them and ultimately succeeded in his aim of taking away the prosecutrix. After getting the prosecutrix freed from the captivity, her father lodged this report on the basis of which offences under Sections 363, 366, 506 (B), 342/34 IPC were registered against the accused/appellants. Investigation resulted in filing of the charge-sheet under the same sections. However, the charge framed

against the accused/appellants was only under Sections 363 and 366/34 IPC.

2. Having taken note of the material on record including the evidence of the witnesses learned Court below convicted and sentenced each of the accused/appellants under Sections 363 and 366/34 IPC and sentenced to undergo RI for 5 years with fine of Rs.2000/- on each count. Hence, this appeal.

3. Counsel for the accused/appellants submits that the evidence of the witnesses reveals that the prosecutrix was a consenting party to the act of the accused/appellants as the love letters written by the accused addressed to her have been seized and marked as the defence enclosures. He also submits that the factual picture painted by the prosecution that the accused/appellants removed the prosecutrix in the broad day light that too in the presence of all her family members sounds highly improbable and difficult to digest because had the prosecutrix herself not been ready, they would not have succeeded in their pursuit. According to him, even the age aspect of the prosecutrix holding her minor on the date of incident has not been proved by adducing any cogent and clinching evidence. Overall submission of the counsel for the appellants is that looking to the facts and circumstances of the case and the evidence of the witnesses, shaky in nature, cannot lead to the conviction of the accused/appellants for the offences referred to above.

4. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that almost all the witnesses have stated as to the manner in which the prosecutrix below 18 years of the age at the relevant time was abducted from the lawful guardianship in the broad day light without heeding to the implorement of the family members not to do that, the conviction of the accused/appellants under Sections 363, 366/34 IPC is just and proper and no interference therewith is required in this

appeal. He submits that the so called love letters produced by the defence were written by the accused Prabhakar only and not by the prosecutrix. The prosecutrix has even denied the existence of any love affair with accused Prabhakar. State counsel thus holds the findings of the Court below to be in consonance of the evidence on record.

5. This Court has heard counsel for the parties at length and gone through the material on record with greater degree of circumspection. Evidence of the prosecutrix reveals that on the date of incident the accused Prabhakar came to her house at 10 AM and dragged her by hair to his house and made her captive for about six hours. She has further stated that the other accused persons at that time were standing outside her house. After being taken to the house of accused Prabhakar she was kept in confinement and at that time accused Prabhakar went away somewhere else whereas the accused persons were put on guard. She has categorically denied about her readiness in accompanying accused Prabhakar or that there was any love affair between them. Her father (PW-2) has also supported the case of the prosecution stating that after he got back home, her family members apprised him of the prosecutrix being taken away by the accused/appellants. According to him, the prosecutrix was recovered from the house of accused Prabhakar at about 4 PM and then the FIR (Ex.P-1) came to be lodged. Both, prosecutrix and her father have disclosed about her age to be in between 16-17 years at the relevant time. Mark-sheet of the prosecutrix was also seized under Ex.P-2 which mentions the date of birth of the prosecutrix as 01.07.1981 which remains un rebutted by the defence as no evidence to the contrary has been adduced by it. As far as love letters purported to have been written by the accused/appellant Prabhakar are concerned, they cannot establish about any lover affair between them as there is nothing to show that the prosecutrix wrote anything in response thereto or otherwise. PW-5 the resident of the same village has also supported the case of the

prosecution narrating the manner in which the prosecutrix was removed from the lawful guardianship and did not even listen to anybody and remained adamant in taking her away with him. Existence of any affair between the two has clearly been denied by the prosecutrix. PW-3 maternal grandmother of the prosecutrix has also corroborated the testimony of PW-1, PW-2 and PW-5 categorically describing the manner in which accused Prabhakar forcefully took away the prosecutrix from her house and made her captive up-till 4 PM. The evidence of the witnesses examined by the prosecution remains consistent right from the FIR and the statements recorded under Section 161 of the Cr.P.C. As regards the separate photographs of the accused Prabhakar and prosecutrix, no nexus pointing at the affair of prosecutrix with the accused Prabhakar is established particularly when the prosecutrix has categorically denied about such photographs being snapped.

6. Overall evidence thus leads to the one and only irresistible conclusion that accused/appellant Prabhakar, in active connivance of the other accused persons, perforce removed the prosecutrix of lawful guardianship and held her hostage in his house putting his companions at guard outside and thereby committed the offences under Sections 363 and 366/34 IPC. Being this, the approach of the Court below fully rests on the evidence collected by the prosecution and no illegality or infirmity is attributable to that. Accordingly, the judgment impugned is hereby affirmed and the appeal preferred by them meets the fate of dismissal.

7. The accused/appellants are reported to be on bail. If that is so the appellants be sent to jail for completing their sentence.

Sd/-

(Vimla Singh Kapoor)

Judge

JyotishilAjay