

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1399 of 2000**

1. Raju alias Rajendra Kumar Yadav S/o Jagmohan, aged about 19years R/o Seja, Police Station Palari, Distt. Raipur (M.P.) (Now Chhattisgarh)
2. Dukalha @ Basali S/o itwari Yadav, aged about 35 years R/o Shivaji Nagar (Mahoba Bazar), Police Station, Amanaka, Raipur (M.P.) (Now Chhattisgarh).

----Appellants**Versus**

State of Chhattisgarh M.P. through P.S. Palari, Distt. Raipur (M.P.) (Now Chhattisgarh)

---- Respondent

For Appellants	:	Mr. Alok Dewangan, Advocate
For Respondent	:	Mr. Sushil Sahu, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****19/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 23/03/2000 passed in Sessions Trial No. 357/1995 by the Second Additional Sessions Judge, Baloda-Bazar whereby the Appellant has been convicted and sentenced in the following manner:-

Conviction	Sentence
For Appellant No.1.	
U/s 363 of the IPC	RI for 3 years and to pay fine of Rs. 1000/-, with default stipulation
U/s 366 of the IPC	RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.
U/s 376 of the IPC	RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.
For Appellant No.2	
U/s 363 of the IPC	RI for 3 years and to pay fine of Rs. 1000/-, with default stipulation
U/s 366 of the IPC	RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.

2. Facts of the case are that the age of the Prosecutrix was about 15 years 11 months and 15 days on the date of incident i.e. 02/07/1995. FIR (Ex.P-2) has been lodged by Mahttar Das (PW4). As per prosecution story, the Prosecutrix (PW5) got married with Kamal Das. After 11 days of marriage, she had come to her maternal house. On 02/07/1995 at about 5:00, she was missing. On the same day, Appellant Raju was also missing. On suspicious, father of the Prosecutrix Mahttar lodged a report. During investigation, the Prosecutrix was recovered from the house of Appellant Raju. Her statement was recorded and thereafter offence has been registered. Statements of other witnesses have also been recorded. It is alleged that Appellant Dukalha had helped Appellant Raju while absconding the Prosecutrix. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 20 prosecution witnesses have been examined. No defence witness has been examined. Statements of the Appellants under Section 313 of the Cr.P.C were recorded, wherein they have pleaded their innocence and false implication in the matter.
3. After trial, the trial Court has convicted and sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants submits that the Appellants have been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that the Prosecutrix (PW5) has not supported the case of the prosecution and has turned hostile. The Prosecutrix has stated nothing against the Appellants, instead thereof, the trial Court has wrongly convicted the

Appellants only on the basis of submission of the Prosecutrix which was given by her after declaration of hostile. The trial Court has ignored the fact that in her cross-examination, she has categorically admitted the fact at the relevant time, she was more than 18 years of age. She further admitted that no incident has taken place with her, therefore, the conviction of the Appellants is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the statement of the Prosecutrix (PW5) minutely.
7. The Prosecutrix (PW5) in her Court statement has deposed that since her mother and father had scolded her, therefore, she had gone to Raipur. She further deposed that Appellant Raju had taken her to Raipur. Since she has not supported the case of the prosecution, therefore, the prosecution has declared her hostile. However, leading questions were put before her. In reply to that, she disclosed the fact that Appellant Raju had taken her with him in a Taxi. Thereafter, he had taken her to Appellant Dukalha. He also committed intercourse with her. But, when cross-examination of this witness was done, she deposed that no incident had taken place with her and just because her father and mother had scolded her, she had gone to the house of her friend. She further deposed that Appellant Dukalha had not done anything. She further deposed that she considers Appellant Raju as his brother. She further deposed that she is residing with her husband.
8. On the above statement made by the Prosecutrix before the Court, it is

clear that she had made total contradictory statement. In examination-in-chief, she has not supported the case of the prosecution and after declaration of hostile, she supported the case of the prosecution, and thereafter when defence cross-examined her again she has not supported the case of the prosecution and has categorically stated that nothing happened with her. Instead of these type statements, the trial Court has convicted the Appellant, which is not sustainable. Therefore, the finding of the trial Court is not in accordance with law. The impugned judgment dated 23/03/2000 passed in Sessions Trial No. 357/1995 by Second Additional Sessions Judge, Baloda-Bazar is quashed.

9. Consequently, the Appeal is allowed. The Appellants are acquitted from the charges framed against them. It is reported that the Appellants are on bail. Their bail bonds be discharged.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge