

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 933 of 2001

Hira Singh Satnami, S/o- Goverdhan Satnami, Aged about- 22 years, R/o- Village Bharatpur, Police Station – Bhatapara Gramin Dist.- Raipur (C.G.) **---- Appellant**

Versus

The State of Chhattisgarh, Through: Police Station, Bhatapara, District- (C.G.) **---- Respondent**

For appellants	: Mr. R.R. Soni, Advocate
For State/Respondent	: Mr. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

13/11/2019

1. This appeal is preferred against the judgment dated 3rd September, 2001, passed by Second Additional Sessions Judge, Balodabazar (C.G.), in sessions trial No. 73/2001, wherein, the said Court convicted the appellant for charge under Sections 363 and 366 of Indian Penal Code, 1860 and sentenced to undergo R.I. for 3 year and fine of Rs. 500/- in each count with default stipulations.
2. In the present case, the prosecutrix is (PW-1), Dhanau (PW-2) is her father and Chaito Bai (PW-3) is her mother. As per version of prosecution, she was minor on the date of incident i.e. on 12th December, 2000 and was in lawful guardianship of her parents. Appellant/accused took her without consent of her parents to seduce her for illicit intercourse. The matter was

reported and investigated and after completion of trial the appellant was convicted and sentenced as mentioned above.

3. The question for consideration of this Court is whether the appellant taken her or enticed. Dhanau (PW-2) and Chaito Bai (PW-3) did not depose about date of birth of the prosecutrix. The case of the prosecution is based on one birth certificate i.e Ex.P-14 and as per version of M.L. Ajgale (PW-13) who is Assitant Sub Inspector and investigating officer. He seized the document of birth from one Kotwar-Bhawani Das, who prepared Ex.P-14 but that Kotwar-Bhawani Prasad was not examined before the Trial Court. No original record of birth produced before the Trial Court from the possession of persons who was Kotwar of the said village. Therefore, there is nothing to prove document i.e. Ex.P-14. In the absense of oral and documentary evidence, it is not proved that prosecutrix was below 18 years of the age on the date of incident i.e. on 12 December, 2012.
4. In view of the above, it is not established that she has been kidnapped from her lawful guardianship and offence under Section 363 of IPC is not established against the present appellant.
5. The second question for consideration of this Court is whether the appellant kidnapped or abducted the prosecutrix with intend that she may be compelled to marry or she may be seduced to illicit intercourse.

6. Prosecutrix PW-1, did not support the version of the prosecution. This witness does not state anything against the present appellant that he kidnapped or abducted her for compelling her to marry or for seducing her to illicit intercourse.
7. The other witnesses are supporting evidence and their version did not establish ingredients for the offence. Therefore, the charge under Section 366 of IPC is not established and finding recorded by the Trial Court is not sustainable.
8. Accordingly, the appeal is allowed, conviction and sentence passed against the appellant is hereby set aside. He is acquitted from both the charges.

Sd/-
(Ram Prasanna Sharma)
Judge