

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 619 of 2011

Reserved on : 14.10.2019

Delivered on : 04-12.2019

Smt. Meena Banjare, Wd/o Late Rupau Banjare, aged about 45 years, R/o Jarhabhatha near Ambedkar Building, Police Station- Civil Line, Bilaspur, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Station House Officer, Police Station- Pathariya, District- Bilaspur (C.G.)

---- Respondent

For Appellant	:	Mr. Y.C. Sharma, Advocate.
For State/respondent	:	Mr. Raghvendra Verma, Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 25.07.2011 passed by Additional Sessions Judge, Mungeli, District- Bilaspur (C.G.) in Session Trial No. 40/2010, wherein the said court convicted the appellant for commission of offence under Section 368 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 500/- with further default stipulations.
2. As per case of the prosecution, son of complainant namely master Ayush aged about 4 years abducted by co-accused Jitu Banjare on 06.06.2010 at about 6:00 p.m. at Village- Dhodhapur and kept him in his house. It is further case of the prosecution that the said child was kept by the appellant in house of Jitu Banjare. Matter was reported by

father of the victim namely Laxmi Prasad Bareha at Police Station-Pathariya on 08.06.2010. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-
 - (i) The appellant had no role to play in commission of the offence because she did not abduct minor Ayush and she did not keep him in her house.
 - (ii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
4. I have heard learned counsel for the parties and perused the records.
5. Laxmi Prasad (PW-1) is father of Ayush. He lodged FIR (Ex.P/5) on 08.06.2010, but name of the present appellant namely Meena Banjare is not mentioned in the said FIR. Nothing is mentioned in the FIR against the present appellant. Though Laxmi Prasad (PW-1) deposed before the trial court that the present appellant occupied the same house in which Ayush was kept and she tried to throw the child, but this version is neither mentioned in the FIR nor in the earlier statement of this witness, therefore, version of this witness against the present appellant is not liable to be accepted unless sufficient explanation is given for material omission in the FIR.

6. Savitri Bai (PW-2) deposed before the trial court the appellant kept her child in the house, but this witness has not deposed anything against the present appellant in her earlier statement before the investigating officer recorded under Section 161 of the Cr.P.C. There is no explanation that why this fact was not stated earlier, therefore, version of this witness is also not acceptable in absence of proper explanation. No other witness deposed against the present appellant. The two witnesses named above who deposed against the present appellant are not reliable on the point of keeping child in the house because they had not stated anywhere during investigation against the present appellant for commission of offence under Section 368 of IPC. It has to be established that any person knowingly conceals or confines any person that he has been kidnapped or abducted. In the present case, there is no evidence that the present appellant had knowledge that Ayush has been abducted or kidnapped, therefore, commission of offence under Section 368 of IPC is not established.
7. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and she is acquitted of the charge framed against her under Section 368 of IPC. The appellant is reported to be on bail. Her bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge