

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 818 of 2018

Pawan Gond, S/o. Sukhram Gond, Aged About 27 Years, R/o. Village Patarapara, P.S. Rajpur, District- Balrampur, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : Police Station Dhourpur, District -Surguja Chhattisgarh.

-----Respondent

For Appellant	: Ms. Hamida Siddiqui, Advocate Mr. Sumit Singh Rathore & Smt. Rashmi Sen, Advocates
For Respondent/State	: Mr. Arun Shukla, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (F.T.C.), Surguja (Ambikapur) (C.G.), in Criminal Case (POCSO) No.22/2015 on 28.05.2018, convicting the appellant for the offence under Section 363, 366 of the Indian Penal Code and sentencing him to under go R.I. 3 years and fine of Rs.500/-, R.I. for 3 years and fine of Rs.500/- respectively with default stipulations.
2. Facts of the case in brief is this that about 3-4 months prior to lodging of FIR (Ex.P-2), the appellant had committed house trespass in the house of the minor prosecutrix (P.W.-3), when she was alone and had physical relation with her. It is alleged that on

18.02.2015, the appellant abducted the minor prosecutrix by making false promise to marry her and then kept her in a place, where he had physical relation with her. Subhash Chandra (P.W.-1), the father of the prosecutrix (P.W.-3) lodged missing report (Ex.P-1) on 22.02.2015 on which basis, FIR (Ex.P-2) was lodged and offence were registered against the appellant. The prosecutrix was recovered from the custody of the appellant vide Ex.P-5. The prosecutrix was then medically examined and thereafter her statement was recorded. The statement of other witnesses were also recorded and after completion of investigation, charge-sheet was filed before the concerned Court.

3. Appellant was charged with offence under Section 363, 366, 376 (2) (b) of the Indian Penal Code and Section 4, 5 (b) read with Section 6 of Protection of Children from Sexual Offences Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable

and cogent evidence in support of the charge. The prosecutrix (P.W.-3) has clearly stated that she had accompanied the appellant willingly, wherever he went and the appellant had never made any physical relation with her, which has been totally disregarded by the Court below. Apart from that, none of the other witnesses have stated that the prosecutrix had narrated to them about her physical relation with the appellant. It is also submitted that the age of the prosecutrix had been above 18 years on the date of incident. Although, the witness of school register (P.W.-7) has been examined, but the author of the entry made has not been examined in this case, hence, the entry in the school register is not proved. Therefore, the appellant was clearly entitled for acquittal. Apart from that the appellant and the prosecutrix both have married regarding which, the statement has been made by Dev Prasad Yadav (P.W.6). The prosecutrix herself has appeared before this Court and by the orders of this Court, her statement has been recorded by the Registry, in which she has stated that during the pendency of the appeal, she has entered into compromise with the appellant and now both of them are married having a child. Hence, she does not want to prosecute the appellant. Hence, for this reason, it is prayed that the appeal be allowed and the appellant be acquitted of all the charges found proved against him.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the

prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. The appellant has already acquitted of the charge under Section 376 (2) (b) of the Indian Penal Code and Section 5 and 6 of POCSO Act. Regarding charge of abduction with intention to subject the prosecutrix to illicit intercourse, the evidence of the witnesses are perused and scrutinized.
9. Prosecutrix (P.W.-3) has not given any statement in examination-in-chief against the appellant, hence, she was declared hostile and cross-examined by the prosecutor, in which she has stated that she was acquainted with the appellant and then on 18.02.2015 on asking of the appellant, she went to a place, where she stayed with him for a night and on the next day, the appellant took her to his house, where she continued to stay and it was then her family members, who were searching her, arrived on the spot. In cross-examination, she has admitted in paragraph-6 that the appellant had not allured her with any promise to marry her. She has further stated in paragraph – 9

that she has made statement before the police that wherever she had gone, she had gone willingly without any allurement or pressure. Hence, this witness has not made any such statement to hold that she was abducted by the appellant. Only thing she has stated that the appellant asked her to come to his house and this witness willingly accompanied him. According to this statement, the ingredients of Section 363 regarding taking or enticing away are not found.

10. Subhash Chandra (P.W.-1) has stated that his daughter went missing. He lodged missing report Ex.P-1. He has not made any other statement regarding recovery of the prosecutrix from the custody of the appellant or any narration made by his daughter, the prosecutrix (P.W.-3).
11. Geeta (P.W.-2) has stated that her husband had scolded the prosecutrix, therefore, she left the home and went to the place of her maternal uncle and during search she came to know that the prosecutrix was in the house of the appellant. She has given statement against the father of the appellant, but she has not made any statement against the appellant making any allegation that he was the person, who had abducted her daughter (P.W.-3).
12. Dev Prasad (P.W.-6), is the person, who accompanied the search party searching the prosecutrix. He has stated that the police personnel had caught hold of the appellant and then prosecutrix was recovered. He has not made any further statement as to for

what reason, the prosecutrix had gone missing and who was responsible for it. Although A.S.I, Nirmal Prasad Rajwade (P.W.-8) has stated that the prosecutrix (P.W.-3) was recovered from the custody of the appellant vide Ex.P-5, but this recovery statement is not supported with other statement that the prosecutrix was taken or enticed away by the appellant by way of statement of other witnesses.

13. Hence, after over all scrutiny of evidence of relevant witnesses, I am of this view that the evidence in support of the main ingredients for proving the offence under Section 363 and 366 of the Indian Penal Code are totally missing. Hence, the conviction of the appellant in these offences in the impugned judgment appears to be bad-in-law, which is not sustainable, therefore, the conviction of the appellant under Section 363 and 366 of the Indian Penal Code are set-aside. The appellant is acquitted of the charges levelled against him.
14. Resultantly, the appeal is allowed. The appellant is reported to be on bail, his bail bonds shall continue for a period of six months subject to the provisions of Section 437 of Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)
Judge