

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 948 of 2012**

1. Rajesh Baghel & Anr. S/o Dukhu Ram Baghel, Aged About 19 Years, R/o Village Kewat Nawagaon, PS Suregaon, Distt. - Balod, C.G.
2. Shriram S/o Ramsingh Gayakwad, Aged About 35 Years, R/o Village Parna, PS Dongargaon, Distt. - Rajnandgaon C.G.

-- Appellants**Versus**

- State Of Chhattisgarh Through - SHO, PS Devri, Distt. - Balod, Chhattisgarh

---- Respondent

For Appellants: : Shri B.P. Singh, Advocate

For State/ Respondent : Mr. Raghvendra Verma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****05/03/2019**

1. This appeal is preferred against the judgment dated 06/10/2012 passed by the Additional Sessions Judge, Balod, District Durg (CG) in Sessions Trial No. 26/2012, wherein the said Court has convicted appellant Rajesh for commission of offence under Sections 363, 366 and 376(1) of the IPC 1860 and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay fine of Rs.50/- with default stipulation. He is convicted for offence under Section 506 Part-II of IPC and sentenced to undergo R.I. for 7 years and to pay fine of Rs. 50/- with default stipulation. Appellant No. 2 namely Shriram was convicted

for offence under Section 368 of IPC and sentenced to undergo R.I. for 7 years and to pay fine of Rs.50/- with default stipulation.

2. In the present case, prosecutrix is PW1. As per version of prosecution, prosecutrix is minor and on 7th June, 2012 at about 10 P.M. in the night she came out from her maternal uncle's house for answering call of nature at that time the appellant pressed her mouth and committed forcible intercourse with her. Further case of the prosecution is that on 8th and 9th June, 2012 the appellant Rajesh took the prosecutrix to his maternal uncle's house on bicycle and there also he committed rape with her giving false promise of marriage. It is alleged that appellant Shriram wrongfully concealed the prosecutrix knowing that she has been kidnapped. Appellants were charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) It is not proved that the prosecutrix is below 18 years of age, therefore, she was not in custody of lawful guardian, therefore, offence under Section 363 of IPC is not made out.

(ii) The prosecutrix herself accompanied with appellant Rajesh and stayed with him which shows her consent and, therefore, offence under Sections 366 and 376 of IPC is not made out.

(iii) Mere use of some words regarding threat is not sufficient to establish charges under Section 506 Part II of IPC.

(iv) From the evidence of the prosecutrix it is clear that appellant Shriram had no knowledge that prosecutrix reached to his house without informing her parents and as per evidence, he was going to inform the police about staying of the prosecutrix and appellant Rajesh in his house, therefore, charge under Section 368 of the IPC is not established against him.

4. On the other hand learned State Counsel supporting the impugned judgment has submitted that the judgment of conviction and order of sentence passed by the trial Court on the basis of the evidence adduced by the prosecution and the same is well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Parasram (PW-7) is Kotawar of Village Baharabhata. As per version of this witness, he produced photocopy of Kotwari Register at police station Deveri at 12.06.2012. As per version of this witness (para-3) the entry regarding the prosecutrix was made by earlier Kotawar namely Kheduram. He further deposed that he is not aware of the fact as to how entry was made in the Kotwari Register. From

the evidence of this witness, it is not clear whether any of the parents informed the Kotwar regarding birth of the prosecutrix. Therefore, it is not clear as to how the entry is made in the said Kotawari Register. Person who informed the then Kotwar namely Kheduram is not examined before the trial Court, therefore, Kotwari Register is not established the age of the prosecutrix. On the basis of Kotawari Register it is not proved that on the date of incident, the prosecutrix was below 18 years.

7. Sunder Lal (PW-2) is the father of the prosecutrix. He made bald statement that age of the prosecutrix is 16 years, but from the evidence it is not clear that he informed the Kotawar regarding date of birth of the prosecutrix or he informed the date of birth of prosecutrix to any school, therefore, there is no documentary evidence available on the basis of statement of Sunder Lal to establish that prosecutrix was under 18 years at the time of incident. When it is not proved that prosecutrix was under 18 years of age on the date of incident, she is not under the custody of lawful guardianship, therefore, offence under Section 363 of IPC is not established.

8. From the evidence of prosecutrix (PW-1) she moved with appellant Rajesh in bicycle and stayed at the house of his maternal uncle for 3 days. From her evidence it is clear that she did not complaint to anyone that the appellant forced her to leave her parental house. Staying for 3 days with appellant Rejesh shows that she was consenting party, therefore, it is difficult to believe that anything done

against her will or against her consent. Looking to the evidence of the prosecutrix, it cannot be said that she has been compelled for illicit intercourse.

9. For establishing charge of rape the evidence of prosecutrix must be of sterling quality but that is not case here. Therefore, it is not safe to act on the statement of the prosecutrix for establishing the charges as alleged. Charges under Sections 363, 366 and 376(1) of IPC are not established against the appellant.

10. The prosecutrix deposed before the trial Court that the appellant threatened her to kill but it is not clear from her statement whether the appellant was determined to execute to the threat. Unless there is element of determination, mere words were not sufficient to establish charge. Words are mere fury but has no substance, therefore, charge under Section 506 Part II of IPC is not established.

11. Appellant Shriram has been convicted and sentenced under Section 368 of IPC 1861. To constitute offence under Section 368 of IPC the prosecution is under obligation to establish that any person in question has been kidnapped and accused/appellant Shriram knew that said person is kidnapped and having such knowledge, he wrongly confined and concealed with the person concerned. From the evidence prosecutrix herself (para 12) appellant Shriram was going to inform the police that the prosecutrix and Rajesh are staying in his house. Looking to the statement it is clear that appellant Shriram did

not conceal or confine the prosecutrix knowingly that she has been kidnapped, therefore, his criminal intention is not established.

12. On overall assessment of the entire evidence, charges levelled against the appellants are not established. Accordingly, the appeal is allowed. Appellant Rajesh is acquitted of the charges under Sections 363, 366, 376 (1), and 506 Part II of IPC 1860 and his conviction is set aside. Appellant Shriram is acquitted of the charge under Section 368 IPC and his conviction is set aside. Both the appellants are reported to be on bail. Their bail bonds shall remain operative for further period of six months in view of Section 437-A Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Vasant.