

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 302 of 2015

The State of Chhattisgarh, through District Magistrate Bemetara,
CG. ----- **Petitioner**

Versus

Jagjivan Lal Mandle, S/o Kamal Das Mandle, aged about 24
years R/o. Village Putpura, Police Outpost Maro, Police Station
Nandghat, District Kabirdham, CG. ----- **Respondent**

For the Petitioner	:-	Shri K.K. Singh, Government Advocate
For the Respondent	:-	None

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

15.04.2019

1. This petition seeking leave to appeal has been filed against the impugned judgment dated 01.12.2014 passed by Additional Sessions Judge, Bemetara in Sessions Trial No.5/2013 acquitting the respondent/accused of the charges under Sections 363, 366 and 376 IPC.
2. Facts of the case in brief are that on 12.10.2012 complainant Genduram (PW-3), father of the prosecutrix (PW-2) had filed a missing report (Ex.P-5) stating that on 07.10.2012 his daughter (prosecutrix) was sleeping in the house and when he woke up in the next morning, she was found missing. On this report, offence under Section 363 of IPC was registered against the accused/respondent. Subsequently on 15.10.2012 the prosecutrix was recovered from the custody of accused/respondent at Nandgaon Bus Stand vide recovery Panchnama Ex. P-11 and disclosed that the accused/respondent had forcibly taken

her away on the assurance of marriage and during this period he also committed forcible sexual intercourse repeatedly against her will and without her consent. After recording her diary statement she was sent for medical examination and after completion of investigation the *challan* was filed against the respondent/accused under Sections 363, 366 and 376 of IPC followed by framing of charge accordingly.

3. The prosecution examined as many as 19 witnesses in support of its case. Statement of the respondent/accused under Section 313 of the Code of Criminal Procedure was also recorded where he has pleaded his innocence and false implication in the case. Learned trial Court after going through the record acquitted the respondent/accused of the charges levelled against him vide judgment impugned. Hence, this petition.

4. Counsel for the petitioner/State submits that learned trial Court has ignored the fact that the accused/respondent removed the minor prosecutrix from the lawful guardianship, kept her in captivity for number of days and during all this period he sexually exploited her many a time. He submits that the judgment impugned is not in conformity with the evidence collected by the prosecution and, therefore, the same is required to be set aside entailing conviction of the respondent/accused.

5. Heard counsel for the petitioner/State and perused the evidence on record.

6. First of all this Court is required to see as to whether the prosecutrix was minor on the date of incident or not. The best persons who could have disclosed the exact date of birth of the prosecutrix are

her parents but in this case they have not stated anything to this effect. Though her father (PW-3) has stated that it is he who got the prosecutrix admitted in the school and her date of birth was also recorded on the information provided by him but he has expressed his ignorance about the same being 21.04.1994. Of course, the prosecutrix has stated her date of birth as 05.12.1996 but at the same time she has also admitted that in the school record her date of birth is recorded as 21.04.1994. The prosecution has produced the birth certificate of the prosecutrix mentioning her date of birth as 05.12.1996 but there is no cogent and clinching evidence to show as to on what basis such date of birth has been recorded in it. On the other hand, the school register marked as Article 2-C discloses the date of birth of the prosecutrix as 21.04.1994. School register also shows that the prosecutrix was admitted in the school on 03.07.2000 and, therefore, the view taken by the Court below that she might have been admitted in the school at the age of six and, therefore, on the date of incident she must have been above 18 years of age. The said school register which was seized under Ex.P-3 mentioning the date of birth of the prosecutrix as 21.04.1994 has also been proved by school teacher (PW-7). PW-9 - the uncle of the prosecutrix has also stated that the date of birth of the prosecutrix was disclosed in the school by her father as 21.04.1994. Thus in view of the evidence of the witnesses, the view taken by the learned trial Court that on the date of incident the prosecutrix was above 18 years of age appears to be fully justified.

7. Now the next question to be decided is as to whether the prosecutrix was a consenting party to the act of the respondent/accused in removing her from the lawful guardianship and then

subjecting her to repeated forcible sexual intercourse. It has come in the evidence of prosecutrix (PW-2) that the respondent took her to several places and kept her in the house of his relatives. She has also stated that he asked to marry her and keep her as queen. She has also stated that she accompanied respondent/ accused to the Arya Temple at Raipur where he put vermilion on her hair parting streak. She has stated all throughout that the respondent/accused had made physical relationship with her many a time. She has stated that the respondent/accused is physically handicapped and is unable to walk. Her evidence further shows that in the house where she was kept by the respondent/accused was surrounded by several houses. If the evidence of the prosecutrix alone is seen carefully, it goes to show that she had ample opportunity to raise hue and cry and disclose her helplessness to the people who might have come across her during the period when she was being taken by the respondent/accused from one place to the other. She could also disclose about her abduction and physical exploitation while being kept in the house of the relatives of respondent/accused for a period of 8 days but she did not do all that and maintained silence throughout which shows that she was a consenting party to the act of the respondent/accused from the very beginning. Medical report of the prosecutrix Ex.P-18 also shows her hymen being old ruptured, no internal or external injuries were present on her person and she was habitual to sexual intercourse. This medical report has been proved by Dr. Rajshri Deodhar (PW-15) who did the medical examination of the prosecutrix. The doctor (PW-14) who medically examined the respondent/accused though has opined him to be capable of sexual intercourse yet he has stated that he was

physically handicapped and was not in a position to walk. The physical condition of the respondent/accused also falsifies the version of the prosecutrix that he took her by force and committed sexual intercourse against her will and without her consent. Thus the prosecution has failed to establish its case beyond reasonable doubt that the accused/respondent eloped her, took her to several places and exploited her physically against her will and without her consent. Even otherwise, it is a settled legal position that if the material on record gives rise to two possible and plausible views, the one favouring the accused has to be preferably taken. That is what the Court below has done in this case and being so the conclusion drawn by it holding the respondent/accused not guilty does not appear to suffer from any legal setback.

8. In view of the over all evidence discussed here-in-above, this Court does not find any legal error in the findings recorded by the trial Court acquitting the respondent/accused of the charges under Sections 363, 366 and 376 IPC. Accordingly, this Court does not see any reason to interfere with the judgment impugned.

9. Leave to appeal is, therefore, refused and the petition is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge