

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 905 of 2016**

Sudren Vadde S/o Late Shukalu Ram Aged About 32 Years R/o Village Timnar, Post Devgaon, P.S. Narayanpur, District Narayanpur, Chhattisgarh., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Narayanpur, District Narayanpur, Chhattisgarh., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sushil Dubey, Advocate.
For Respondent/ State	:	Shri Lav Sharma, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****07/02/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 13.7.2016 passed by Learned Additional Sessions Judge (FTC), Kondagaon, District Kondagaon, Chhattisgarh in Sessions Trial No. 129 of 2013 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Sections 366, 342 and 506 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 10 years, 1 year and 7 years and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo additional RI for 1 month, on each count respectively, with a direction to run all the sentences concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 04.09.2013, the appellant took the victim with him on pretext of filling up of form for recruitment in Home-Guards and instead of taking her to the place at Jagdalpur, he took her to village Kapsi where he outraged her modesty and then by putting her under threat kept in confinement inside the room. Victim- Ku. Manisha Markam (P.W.-6) lodged FIR Ex.-P/6 in Police Station -Narayanpur. On that basis, investigation was made and the victim was medically examined.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court. The appellant and the co-accused were charged for the offences under Sections 366, 342, 354(A) and 506 of the IPC to which he denied and prayed for trial.

(5) In order to prove the guilt of the appellant, the prosecution examined 10 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defence.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant for the charges under Sections 366, 342, 354A and 506 of the IPC as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that no offence is made out against the appellant on the basis of the evidence present on record of the trial Court, therefore, the conviction against him is bad in law. Hence, it is prayed that the appellant be acquitted in this case and in alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, looking to the fact that the appellant is in jail since near about 3 years and also looking to the long detention of the appellant in jail, his sentence of imprisonment be reduced to the period of custody already undergone by him.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submissions. He further submitted that the prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Manisha Markam (P.W.-6) is the victim. She has stated that the appellant gave her inducement that vacancies have been advertised in Police Service and being influenced the victim accompanied him for going to Jagdalpur. The appellant instead of taking the victim to Jagdalpur, took her to village Kapsi and by keeping her inside the room,

he closed the door. The appellant said that the victim has to marry him or otherwise he will kill her. Thereafter, while the appellant was taking her to another place on motorcycle, the victim found opportunity and made escape. The victim lodged FIR Ex.-P/6 at Police Station Narayanpur. In cross-examination, she admitted that she has previous acquaintance with the appellant, otherwise her statement in the examination-in-chief that the appellant taken her to Jagdalpur and then to village Kapsi and had confined her inside the room asking her to marry and threatening her in that respect has remained unrebutted.

(12) Doctor Aditya Keki (P.W.-4) has examined the victim and found some simple injuries present on her hand, palm and wrist vide Ex.-P/4 which suggest that some struggle has taken place.

(13) Vishu Mandal (P.W.-5) is the witness of the incident. He was not supported the prosecution case and was declared hostile.

(14) Smt. Sangeeta Markam (P.W.-7) is the mother of the victim who has stated that the victim narrated to her about the incident.

(15) Sukman Ukey (P.W.-9) has partially supported the version of the prosecution by stating that the appellant had brought one girl to his house but he did not stop. He has further not supported the prosecution case and declared hostile.

(16) Mamta Kahra, Sub-Inspector (P.W.-8) has stated about recording FIR lodged by the victim/complainant Manisha Markam (P.W.6) regarding which there is no challenge in her cross-examination.

(17) After closely scrutinizing the evidence present on record of the trial Court, it has appeared that the prosecution has proved its case beyond reasonable doubt that the appellant was the person who had, by using the force, abducted victim - Manisha Markam (P.W.-6) and by taking her to village Kapsi had forcibly confined her in a room for sometime by threatening her and also by demanding her to marry him. Therefore, the conviction of the appellant for the offences under Sections 366, 342 and 506 of the IPC are well-founded and needs no interference. However, it has appeared that the sentence awarded specifically for the offences under Sections 366 and 506 of the IPC appears to be too harsh which needs modification.

(18) Therefore, the appeal is allowed in part upholding the conviction recorded by the trial Court with modification of sentence of imprisonment imposed upon the appellant. As submitted by counsel for the appellant, the appellant had been in custody for a period of 3 months and 28 days during the pendency of trial against him and thereafter, he is in jail since 13.07.2016. Therefore, he is nearly completing a period of 3 years in jail which appears to be sufficient. Accordingly, the appellant is sentenced with the period of detention already undergone by him in jail for the offences under Sections 366 and 506 Part II of the IPC. Hence, the appellant is sentenced with imprisonment of period of custody already

undergone by him in jail. He be set at liberty forthwith if not required in any other case.

(19) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Monika/ Heeralal