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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2150 of 1999**

- Pinto alias Vipin, S/o. Shri Tekchand Gupta, aged about 22 years, R/o. Kharsia, Gupta Lodge, Police Station Kharsia, Distt. Raigarh.

---- Appellant**Versus**

- State Of Madhya Pradesh (Now Chhattisgarh) Through Station House Officer Police Station Sakti, Distt. Janjgir Champa (M.P.) (Now CG).

---- Respondent

 For the appellant :Shri Shaleen Singh Baghel and Shri
 Barun Chakraborty, Advocates
 For the Respondent/State:Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****29.01.2020**

1. The appeal is preferred against judgment dated 09.8.1999 passed by Additional Sessions Judge, Sakti, Distt. Bilaspur (MP) (Now CG) in Session Trial No.373/1998 wherein the said Court convicted the appellant and one other co-accused namely Rishi Kumar for commission of offence under Sections 363 and 342 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 03 years and to pay fine of Rs.5000/- for the offence under Section 363 IPC and to pay fine of Rs.500/- for the offence under Section 342 IPC with default stipulation.
2. In the present case, prosecutrix is PW-2. As per the version of the prosecution, on 01.7.1997 at about 9.00 pm, the appellant along with co-accused Rishi Kumar came to the house

of complainant Vijay Kumar. Co-accused Rishi Kumar who was previously known to Vijay Kumar went inside the house as he had friendship with son of Vijay Kumar. He asked for a glass of water which was provided to him by daughter of Vijay Kumar, who is the prosecutrix. She also provided a glass of water to present appellant who was standing outside near the motor cycle. It is alleged that the appellant and Rishi Kumar took the prosecutrix from her lawful guardianship and they stayed in a room at Gupta Lodge. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Evidence regarding kidnapping is only against co-accused Rishi Kumar and present appellant had no role to play in crime in question, therefore, his conviction is not sustainable.

(ii) The trial Court has not evaluated the evidence properly and the appellant was convicted without there being any cogent evidence. Therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State while supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. Prosecutrix/victim is PW-2 who is the sole eye-witness account of the incident. Other witnesses namely Vijay Kumar (PW-1) and Rukmani (PW-3), who are the parents of the victim, deposed before the trial Court that it is the co-accused Rishi Kumar who came to their house at about 9.00 pm. The parents have not deposed against the present appellant. The victim (PW-2) also deposed that she moved out of the house on the instigation of co-accused Rishi Kumar. She further deposed that when she moved with co-accused Rishi Kumar in a motor cycle, the other person was riding the motor cycle, but she has not seen the face of said driver. Though she further deposed that the appellant was driving the vehicle but from her statement it is clear that any role on the part of the present appellant in taking the said victim is not established. Mere driving of the motor cycle is not equivalent to any criminal act. The prosecution is under obligation to prove *mens rea* i.e. guilty mind on the part of the appellant, but that is not established from the statement of the prosecutrix. From the evidence of the prosecutrix, it is clear that she was taken to a lodge but in the said lodge, the appellant was not present. Taking into consideration the entire evidence, it is not established that the appellant enticed the prosecutrix for taking her from lawful guardianship and again there is no evidence that she has been wrongly confined by the appellant. Therefore, conviction of the appellant for the offence in question is not sustainable.

7. Accordingly, the appeal is allowed. Conviction of the appellant for the offence under Sections 363 and 342 of the IPC is

hereby set aside. He is acquitted of the said charges. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months from today as per the terms of Section 437A of CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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