

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 61 of 2003

Anil Sharma, S/o. Kishan Lal Sharma, aged about 22 years, R/o. Pandit Din Dayal Upadhyay Nagar, Sector I, Quarter No. M.I.G. 169, Thana Azad Chowk, Raipur, District Raipur, C.G.

---- Appellant

Versus

The State Chhattisgarh, Through the District Magistrate, Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Rajkumar Gupta, Advocate
For Respondent/State	:	Shri Anand Verma, Dy. G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

10.06.2020

The case put forth by the prosecution in short is that on 25.01.2002, at about 11.00 a.m., when 13 years old prosecutrix had set out for the school, accused/appellant met her on the way and putting her on the promise of marriage took her to Raipur Railway station by rickshaw. From Raipur, they both boarded a train for Nagpur. After reaching Nagpur, they stayed in a hotel for about two days, but no physical relations were made between them. Thereafter, the appellant took the prosecutrix to Ludhiana and kept her in a rental house for about 1 ½ to 2 months as his wife and all along this period physical relations were made between them. From Ludhiana, he took her to Calcutta, where, they stayed in the Inn (Dharamshala) for two days. From Calcutta, he took her to Rajasthan and kept her in the house of his younger brother for about a month and during all this

period the physical relation continued to be established between them. Subsequently, they got back to Raipur via Calcutta on 13.06.2002 and it is on that day the prosecutrix was recovered by the Police and recovery Panchanama (Ex-P-6) was prepared. She underwent medical examination by Dr. Sarita Dubey (PW-7). The report to that effect was lodged by her father Surendra Kumar Verma (PW-1), on the basis of which, FIR (Ex-P-10) came to be recorded and after completion of investigation charge sheet was filed against the accused/appellant under Sections 363, 366 and 376 of IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment dated 20.12.2002 passed by Additional Sessions Judge, Raipur in Sessions Trial No.333/2002 acquitted the accused/appellant of the charge under Section 376 IPC but found him guilty under Sections 363 and 366 IPC imposing the sentence of four years rigorous imprisonment with fine of Rs.500/- on each count, plus default stipulations. Hence this appeal.

3. Learned counsel for the accused/appellant submits that if the entire case of the prosecution is seen as it is, it is apparent that the prosecutrix was a consenting party to the act of the accused/appellant. He further submits that the conduct of the prosecutrix that though she visited number of places in the company of the accused/appellant and spent a sufficient long time with him, yet she did not make any disclosure to any one about the act of the accused/appellant. He submits that all through the journey, the prosecutrix must have come in contact with several passengers and yet there is nothing on record to show that she disclosed about her abduction to any one. According to the counsel for the appellant all

this shows that the act of the accused/appellant in taking away the prosecutrix with him was consensual.

4. On the other hand, learned State counsel supports the impugned judgment and submits that as the accused/appellant removed the minor prosecutrix from the lawful guardianship, the finding recorded by the Court below are fully justified. He further submits that as on the date of incident, the prosecutrix was minor, the arguments of the counsel for the appellant holding her to be a consenting party cannot be sustainable.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. Though the evidence on record demonstrates the prosecutrix to be a consenting party to the act of the accused/appellant in being taken away and made to submit herself for sexual relations, her minority on date of incident is of no help to the accused/appellant. According to the school certificate (Ex-P-3), the date of birth of the prosecutrix came to be recorded as 27.02.1987 and if implicit, reliance is placed thereon, it can safely be inferred that on the date of incident she was minor and thus, any consent given by her becomes immaterial. The factum of prosecutrix being taken away by the accused/appellant and her recovery effected on 13.06.2002 has also been proved by her father Surendra Kumar Verma (PW-1) who has categorically stated that his daughter told him that she was removed from the lawful guardianship on the assurance of marriage. PW-1 has further stated that after recovery of his daughter he wiped out the vermilion from her forehead and also removed the Mangalsutra from her neck. Version of Surendra Kumar Verma (PW-1) gets

corroboration from the evidence of Ganga Verma (PW-3), who happens to be the mother of the prosecutrix. Kamla Bhatt (PW-4), the Police Sub-Inspector is the witness who took the prosecutrix for medical examination and also ensured her recovery on 13.06.2002. V.K. Pandey (PW-6) is the Investigating Officer who has also supported the case of the prosecution. Dr. Sarita Dubey (PW-7) who medically examined the prosecutrix and gave her report vide Ex-P-12 has opined that the prosecutrix was habitual to sexual intercourse. Since, the accused/appellant has already been acquitted of the charge under Section 376 IPC, the medical report is of no significance for deciding this appeal.

7. As regards conviction of the accused/appellant under Section 363 and 366 IPC, there is ample evidence to show that on the date of incident she was minor and therefore, the consent if any, given by her becomes insignificant. Thus, in view of what has been discussed above, this Court is of the opinion that there is no illegality in the judgment impugned convicting the accused/appellant under Section 363 and 366 IPC and being so his conviction is hereby maintained.

8. As regards sentence, keeping in view the peculiar facts and circumstances of the case including that the prosecutrix remained in the company of the accused/appellant as his wife and during their long stay at several places, physical relations were also established between the two, this Court does not think it proper to again send him to jail and thereby spoil his settled marriage life. Since, the accused/appellant has already remained in jail for about nine months, this Court is of the opinion that the interest of justice would be met if

the sentence imposed upon him is reduced to the period already undergone. Ordered accordingly.

9. The appeal is thus allowed in part.

10. Appellant being already on bail. No order regarding his release etc. is necessary to be passed.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/yasmin