

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 76 of 2003**

1. Rajlal S/o Bhandariram Cherwa, aged about 28 years,
 2. Ramkumar S/o Bhagirath, aged about 25 years,
 3. Dharamsay S/o Ramdhan Cherwa, aged about 22 years,
 4. Motilal S/o Mohan Cherwa, aged about 30 years,
- All Residents of Village Natwahi, P.S. Sonhat, District Koriya (C.G.).
5. Brijlal S/o Hajarilal Cherwa, aged about 22 years, R/o Lul Dudhniya, P.S. Biharpur, District Surguja (C.G.)

---- Appellants**Versus**

1. State of Chhattisgarh, through P.S. Sonhat, District Koriya (C.G.)

---- Respondent

For Appellants	:	Shri Shakti Raj Sinha, Advocate.
For Respondent	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****05/03/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 31/12/2002 passed by Additional Sessions Judge, Baikunthpur (Koriya) Chhattisgarh in Session Trial No. 272/2002; whereby appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 366 of Indian Penal Code (in short "IPC")	R.I. for 2 years and fine of Rs. 500 to each. In default of payment of fine additional R.I. for 2 months each.

- 2) Case of the prosecution in brief is that on the date of incident i.e. 09/03/2002 at around 12:00 PM at village Natwahi when the

prosecutrix, aged about 14 years, was attending the marriage of Phulkuwar, juvenile accused (P) came there and forcibly put vermilion (**Sindoor**) on her hair-parting on the pretext of marrying her. Thereafter, prosecutrix informed about the incident to her father PW-02 Dayaram. At around 04:00 PM when the prosecutrix alongwith her father was returning to her village Salgawan Khurd, on the way the juvenile accused (P) along with 08 other persons forcefully took the prosecutrix to village Natwahi where she was compelled to marry (P) which was refused by her. After 3 days of the said incident, on 12/03/2002 the prosecutrix lodged FIR Ex. P-1 to the effect that she was kidnapped and compelled for marrying Juvenile accused (P). The FIR was lodged against total nine persons naming only Juvenile accused (P). During investigation as per Ex. P-2 identification parade was conducted and accused (P), Rajlal, Ram Kumar, Dharamsay and Motilal were identified by prosecutrix and Ram Kumar, Rajlal and Dharamsay were identified by the PW-02 Dayaram as per Ex. P-2. During investigation vide Ex. P-3 Transfer Certificate of prosecutrix was seized from father of the prosecutrix and Dakhilkharij Register regarding age Ex. P-6A for determination of age of prosecutrix was seized. As per Ex. P-20 Ossification Test was conducted by PW-14 Dr. Ashish Karan and he found the prosecutrix age is between 14 to 16 years. Charge sheet was filed against 5 accused Rajlal, Ram Kumar, Dharamsay, Motilal and Brijlal and separate charge sheet was filed against the juvenile (P). After due investigation charge sheet was filed against above accused under Sections 363, 366 and 147 of I.P.C.

- 3) The Trial Court framed charges against the accused appellants under Sections 363 and 366 of I.P.C. the appellants denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 14 witnesses namely PW-01 (Prosecutrix), PW-02 Dayaram (father of prosecutrix), PW-03 Manrajiya, PW-04 Sumera, PW-05 Vipatram (Teacher), PW-06 Bal Govind, PW-07 Amritlal, PW-08

Hari Prasad, PW-09 Kailash Prasad Gupta, PW-10 Mangal Rajwade (Patwari), PW-11 Heeralal, PW-12 Aagarsai, PW-13 R.D. Sodhi (S.I.) and PW-14 Dr. Ashish Karan (Assistant Surgeon). The statements of the accused appellants were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implications. However, no witness was examined by them in their defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellants as mentioned above in para 1 of this judgment.
- 6) The finding of the learned Trial court regarding age of the prosecutrix that she was not below the age of 18 years at the time of incident was not challenged by the prosecution as no appeal is filed by the State against acquittal of the accused persons under section 363 of IPC.
- 7) Learned counsel for the appellants submits that in this case the Juvenile (P) has already married the prosecutrix and prosecutrix and Juvenile (P) are living together for a long time and Juvenile (P) is treated as Son-in-law (**Gharjamai**) of PW-02 Dayaram. In this case the entire case is based on the evidence of PW-01 prosecutrix, PW-02 Dayaram (father of prosecutrix) and identification parade as per Ex. P-2. Prosecutrix PW-01 has not identified the accused persons in Court during her examination-in-chief and thereafter regarding identification parade when she was declared hostile then she supported identification parade and document Ex. P-2. In para 9 of deposition of prosecutrix, she admitted that on the basis of information given by the Station House Officer she identified the accused persons. Father of the prosecutrix PW-02 Dayaram also admitted this fact in para 6 that he identified accused when Police Officer brought all the accused and showed them to the prosecutrix and father of the prosecutrix, therefore, identification parade has no substance.

- 8) He further submits that juvenile accused (P) has already married the prosecutrix and is living with the prosecutrix since long as her husband in the house of PW-02 Dayaram and this fact is also proved by almost all relatives of the prosecutrix and the prosecutrix herself. Only because Dayaram was not willing to marry the prosecutrix with Juvenile accused (P) and PW-02 Dayaram wanted to marry her daughter to another person but prosecutrix was ready to marry Juvenile accused (P), therefore, for this reason the FIR was lodged by the father of the prosecutrix. The prosecutrix herself admitted this fact that she did not lodge FIR Ex. P-1 but her father PW-02 lodged the FIR. She also admitted in her deposition that she was ready to marry juvenile accused (P) and that she did not raise objection when the juvenile put vermilion on her hair-parting. Therefore, in the given facts and circumstances of the case and the evidence available on record, the basic ingredients of the offence under Section 366 of IPC are completely missing. Therefore, learned Trial Court wrongly convicted the appellants under the aforesaid section and they deserve to be acquitted of the said charge.
- 9) On the other hand learned counsel for the respondent State supports the impugned judgment of the Trial Court and submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the accused/appellants, which needs no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) PW-01 Prosecutrix admitted in para 1 of her deposition that she is unable to identify the accused persons present in the Court. She also admitted in para 9 of her deposition that as per information given by the I.O. (**Daroga**) that they have brought some people who had kidnapped her, she stated regarding the accused persons. In para 4 & 5 she identified the accused persons but in her cross-examination para 8 & 9 she stated that she was ready to marry juvenile accused (P). She also admitted

in para 8 that her age was 18 to 19 years. She also admitted in para 6 that her father had refused to marry her with the juvenile (P). She also admitted in para 7 she was not opposing when juvenile (P) put vermilion on her hair-parting. Looking to the entire statement of the prosecutrix it appears that she identified the accused appellants only on the basis of information given by the S.H.O. (I.O.) and she did not lodge any FIR against juvenile accused (P) and other accused persons. She also admitted that she was not willing to lodge FIR against any person but her father was lodged FIR. Looking to the above evidence, the identification parade held as per Ex. P-2 loses its significance because prior to identification parade all accused persons were shown to PW-01 prosecutrix and PW-02 Dayaram (father of the prosecutrix) and Prosecutrix also admitted in para 1 of examination-in-chief that she is unable to identify the accused person present before the Court. Therefore, the fact whether the accused persons abducted or kidnapped the prosecutrix against her will is doubtful.

- 12) PW-01 prosecutrix admitted in para 6 that prior to incident Juvenile (P) resided with prosecutrix and family of prosecutrix for near about 1 year and Juvenile accused (P) was residing as husband of prosecutrix (**Ghar-Jamai**) and when thereafter her father refused to marry the prosecutrix with Juvenile accused (P) then Juvenile accused (P) left her home. This fact is also proved by the father of the prosecutrix PW-02 Dayaram by stating in para 4 that Juvenile accused (P) resided at his home as son-in-law and he had fixed the marriage of prosecutrix with him. He also admitted in para 5 that when he left the place of marriage alongwith her daughter number of peoples were present there and in presence of many peoples there was scuffle with PW-02 Dayaram and though 40-50 persons were there but no one interfered and no any injury was sustained by PW-02 Dayaram. He also admitted in his deposition in para 6 that the incident was narrated to his brother Heeralal only but Heeralal was not examined before the Court and there is no other eye witness in this case. Though PW-11 Heeralal was examined but he is not

brother of PW-02. Therefore, the fact that the incident was narrated to Heeralal by his brother PW-2 Dayaram is also not proved by the prosecution nor any other eye witness has supported the prosecution case. PW-03 Manrajiya, sister of the prosecutrix was declared hostile by prosecution and she did not support the prosecution case. PW-03 also proved this fact that Juvenile accused (P) resided with PW-01 prosecutrix and PW-02 Dayaram after his marriage being fixed with the prosecutrix and thereafter PW-02 Dayaram refused to marry the prosecutrix with Juvenile accused (P) and fixed her marriage with another boy, on account of which dispute arose between the parties.

- 13) PW-04 Sumera who was also present at the time of marriage, has also proved this fact that Juvenile accused (P) was already living with prosecutrix and family of PW-02 Dayaram as his son-in-law (**Ghar Jamai**) and after some time PW-02 Dayaram refused to marry prosecutrix with Juvenile accused (P).
- 14) PW-07 Amrillal has turned hostile and not supported the prosecution case but he was also present at the time of marriage. Likewise, PW-08 Hariprasad has also turned hostile and not supported the prosecution case.
- 15) PW-09 Kailash Prasad proved the identification parade as per Ex. P-2 but as per witnesses to the said identification parade i.e. PW-01 and PW-02 the accused person were already shown to them prior to identification parade, therefore, the test identification parade becomes doubtful.
- 16) PW-03 Manrajiya has not supported the identification parade and has been declared hostile. PW-10 Mangal Pandey (Patwari) proved Ex. P-2 in map. PW-12 Agarsai turned hostile and not supported the prosecution case.
- 17) Looking to the entire evidence, prosecution has failed to prove its case beyond all reasonable doubt because the main ingredients of the offence under Section 366 of IPC that the prosecutrix was kidnapped by the accused persons for compelling her to marry

juvenile accused (P), have not been proved by the prosecution. Therefore, the accused/appellants deserve to be acquitted of the said charge.

- 18) In the result, the appeal is allowed. The appellants are acquitted of the charge under Section 366 of IPC. Since the appellants are reported to be on bail, their bail bonds shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant