

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 798 of 2004

1. Aaboo @ Alauddin, Aged about 25 years,

2. Sonu @ Saleem, Aged about 19 years,

Both S/o. Aftab, R/o. near Railway Post Office, Thana Torwa, Bilaspur
District Bilaspur (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station Torwa, District Bilaspur
(C.G.)

---- Respondent

For Appellants : Mr. UKS Chandel, Advocate.

For Respondent : Mr. H.S. Ahluwalia, Dy. Advocate General

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

30.06.2020

As per prosecution case, missing report (Ex.P/2) of the victim girl, aged about 17 years was made by (PW-6)- father of the prosecutrix and on the basis of which, FIR (Ex.P-3) was registered against the appellants. It is alleged that on 04.10.2003 his daughter had gone for tuition but she did not return to home. It is also alleged that appellant No. 1 had stopped the prosecutrix on the way along with his younger brother namely Sonu and put under threat and told that if she would

not come with them then his father would be killed and thrown by them. It is further alleged that the appellants had forcibly taken the prosecutrix with them on the motorcycle and roamed over the city hole day and thereafter she was taken to Annuppur by the train where they kept her in their captivity in their father's house. During investigation, the prosecutrix was recovered from the possession of the appellant on 07.10.2003. After completion of investigation, charge sheet was filed against the appellants under Sections 363,366, 506/34 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 16.09.2004 passed in Sessions Trial No. 3/2004 acquitted the accused/appellants under Sections 366/34 and 506 IPC but has held them guilty under Section 363 IPC with imposition of sentence of one year RI with fine of Rs. 3000/- plus default stipulations. Hence, this appeal.
3. Counsel for the appellants submits that the judgment impugned convicting the accused/appellants under Sections 363 IPC is not based on the proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. He submits that the prosecutrix was a consenting party though she visited various places along with the accused/appellants but she did not raise any hue and cry. He submits that there are several contradictions and omissions found in the statements of prosecution witnesses, therefore, it is prayed that the appellants may be acquitted of the charge leveled against them.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
5. Heard counsel for the parties and perused the material available on record including the judgment impugned.
6. As regards the age of the prosecutrix, the prosecutrix (PW-4) has herself has stated in paragraph 6 of her evidence that she was born in the year 1987. The evidence of this witness remained un-controverted in the cross-examination. This apart Sunil Mishra (PW-8), Health Officer who had issued the death and birth certificate and has proved the same which bears the date of birth of the prosecutrix under (Ex.P-6). Thus, from the aforesaid evidence, it stands prove beyond all reasonable doubt that the prosecutrix was below 18 years of age on the date of incident.
7. Now this Court has to see whether the prosecutrix was taken away by the appellants from the lawful guardianship of her parents without their consent. As per statement of prosecutrix (PW-4) in which she stated that on 04.10.2003 while she was going for tuition and when she reached near the bank on the way, then appellant No. 1 came there along with his younger brother Sonu on the motorcycle and put under threat that if she would not sit on the motorcycle with them then her father would be killed and thrown by them and the appellant had taken the prosecutrix with them on the motorcycle. She also

stated that on the date of incident the appellants threatened and roamed over the city on the motorcycle and in the night the appellants forcibly taken to Annuppur by train. She also stated that in Annuppur they kept her in their father's house under their captivity where his father also threatened and told that if she would not marry with his son Abbo then she would be killed by them. Shobha @ Narayan Amma (PW-9)- maternal aunt of the prosecutrix stated in her evidence that she has seen that the prosecutrix along with the accused persons and when she called them then they did not respond her and thereafter she informed the incident at 4.00 o'clock to his sister.

8. Missing report (Ex.P-2) was made by the father namely L.N. Rao (PW-6) against the appellants and on the basis of which FIR (Ex.P-3) was registered on 06.10.2003, stating therein the prosecutrix was forcibly taken by the appellants with them without informing anybody and after inquiry on the missing report, it was found that the prosecutrix was with the appellants in their house at Annuppur and thereafter she was handedover on supurdnama to Police Station Torwa. Sunil Mishra (PW-8) is the witness to the seizure of the death and birth certificate made under (Ex.P-6). Santram Divan (PW-10) is the investigating officer who has supported the case of the prosecution. L.N. Rao (PW-6) is the witness who had recorded the missing report and FIR (Ex.P-3).
9. Thus, looking to the statement of M. Ramna (PW-7) mother of the prosecutrix, Shobha @ Narayan Amma (PW-9) maternal aunt of the

prosecutrix and other prosecution witnesses, it stands prove beyond all reasonable doubt that on the date of incident, the prosecutrix who was a girl less than 18 years of age was taken away by the appellants from lawful guardianship of L.N. Rao (PW-6) without obtaining consent of mother and father of the prosecutrix. Therefore, conviction of the appellants recorded by the trial Court is based upon just & proper appreciation of evidence available on record and needs no interference by this Court.

10. As regards sentence, looking to the fact that the incident had taken place about 17 years back and that by now the accused/appellants have already suffered a lot by fighting a long drawn legal battle since then, this Court does not see any reason to again disturb their lives by again sending them to jail and therefore, their sentence is reduced to the period already undergone, which comes to about 7-8 months in this case. Order accordingly.

11. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE