

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-01-2020

Delivered on 20-02-2020

CRA No. 268 of 2011

- Pradeep Choubey @ Maharaj S/o Mahendra Prasad Choubey, R/o Village Hinchhapur Shankara, P.S. Nagari, Distt.-Dhamtari, C.G.

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Dhamtari, CG.

---- Respondent

 For Appellant : Mr. Varunendra Mishra, Advocate

For respondent/State : Mrs. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-10-2010 passed by the Sessions Judge, Dhamtari in Sessions Trial No. 42 of 2010 wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 and 376 (1) of the IPC, 1860 and sentenced him to undergo RI for one year and fine of Rs.500/-, RI for two years and fine of Rs.1000/- and RI for seven years and fine of Rs.1000/- with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on 21-1-2010 minor prosecutrix (PW/1) was missing that is why a missing report was lodged as per Ex.P/12 on 27-1-2010. It is alleged that parents of the prosecutrix started searching her to all possible places of destination but could not succeed that is why a missing report was lodged after six days i.e., on 27-1-2010 and when she returned in the month of April, 2010, report was lodged against the present appellant on 4-4-2010 as per Ex. P/13 at Police Station Magarlod. It is alleged that the appellant kidnapped the minor prosecutrix, allured her on the pretext of marriage, took her to various places and committed sexual intercourse with her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Observation of the trial court that the prosecutrix is less than 16 years of age is illegal because scribe of the Kotwari Panji (Ex.P/7) has not been examined. The school register is also not sufficient to determine the age of the prosecutrix, therefore, her age cannot be said to be less than 16 years.
- ii The allegation of allurement on the pretext

of marriage is also not probable because prosecutrix is sister-in-law of the appellant and she knew the fact that the appellant was married man on the alleged date of incident.

- l ii) Prosecutrix and appellant stayed for three months at various places as husband and wife, therefore, offence charged is not proved.

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

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The first question for consideration of this court is whether on the date of incident i.e., on 21-2-2010 prosecutrix was minor. PW/6 Domaram is Kotwar of village Dhavalpur and as per version of this witness, earlier his father namely Daulataram was Kotwar of the said village. He produced Kotwari register (Ex.P/11) and as per version of this witness, date of birth of the prosecutrix is

11-8-1994 which was recorded by Bharatlal Dubey and entry was made by his father who was the then Kotwar. Version of this witness is unrebutted and his version is supported by version of Bharatlal (PW/3) who is grand-father of the prosecutrix. As per version of this witness, prosecutrix was born on 11-8-1994 and he made entry in Kotwari register of village Dhawalpur which is supported by version of Domaram (PW/6) Kotwar and Kotwari Panji Ex.P/11. Version of this witness is unrebutted during cross examination and version of this witness is supported by documentary evidence in which it is clearly mentioned that information regarding date of birth of the prosecutrix was given by Bharatlal Dubey, therefore, there is nothing on record to reject testimony of both these witnesses supported by documentary evidence (Ex.P/11) which is birth register and recorded by Economic and Statistics Directorate, MP. As there is nothing on record to reject the evidence regarding age, argument advanced on behalf of the appellant is not sustainable. Date of birth of the prosecutrix is 11-8-1994 and date of incident is 21-1-2010, therefore, prosecutrix was aged 15 years and 5 months on the date of incident and she was below 18 years of age. Female under 18 years of age cannot be taken without consent of guardian as per Section 361 of Cr.P.C., and taking a minor without consent of guardian is offence of kidnapping punishable under Section 363 of IPC.

7. From the evidence of prosecutrix (PW/11), it is clear that the appellant committed rape on her. Version of this witness is unrebutted during cross examination and it is further supported by version of PW/2 Teman Prasad Dubey who is her father, Bharatlal (PW/3) who is her grand-father and again it is supported by version of Dr. T.R. Dhruv (PW/4) who examined the appellant and found him capable of intercourse.
8. No girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. There is nothing on record that the appellant has been roped in a false charge. Appellant is brother-in-law of the prosecutrix and there is nothing on record to say that he has been involved in crime in question on account of grudge or otherwise, therefore, act of the appellant falls within mischief of Sections 366 and 376(1) of IPC for seducing minor prosecutrix for illicit intercourse and for committing rape.
9. The trial court has elaborately discussed the entire evidence and recorded finding that all the three offences have been committed by the appellant. After reassessment of the entire evidence, this court has no reason to take a contrary view what is recorded by the trial court. Conviction of the appellate for the said offences is hereby affirmed. The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC which is minimum

prescribed and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 31-8-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju