

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 743 of 2011

Rajesh Kumar Sahu, S/o Shri Bedram Sahu, aged about 25 years,
R/o Village- Bamu, Seepat, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station- Pali, District- Korba
(C.G.)

---- Respondent

For Appellant : Mr. Vikas Pandey, Advocate.
For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

24/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 22.09.2011 passed by Additional Sessions Judge, Katghora, District- Korba (C.G.) in Session Trial No. 02/2011, wherein the said court convicted the appellant for commission of offence under Section 363 of IPC and sentenced to undergo R.I. for 3 years and fine of Rs. 500/- with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, the appellant kidnapped minor prosecutrix on the date of incident i.e. on 21.09.2010 at 10:00 p.m. from her house by inducing her to marry and thereafter maintained physical relation with her for multiple time. The matter was reported, the appellant was charge-sheeted and after

completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Age of the prosecutrix is not proved to be below 18 years, therefore, charge under Section 363 of IPC is not established.

(ii) The trial court overlooked the fact that the prosecutrix was consenting party in moving with the appellant and the trial court also overlooked the material contradiction and omission in her statement.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

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

6. The appellant was also charged for offence under Section 366 & 376 (1) of IPC, but the trial court acquitted the appellant for both offences on the ground that the prosecutrix is consenting party. The trial court only recorded finding that the prosecutrix

was minor, therefore, the charge under Section 363 of IPC is established.

7. The only question for consideration before this Court is whether the prosecutrix was minor at the time of incident i.e. on 21.09.2010. Vijay Shankar Bhoi (PW-4) who is father of the prosecutrix, deposed before the trial court (Para 6) that date of birth of his daughter is 31.10.1995 and he recorded her date of birth in school register which is correct date of birth i.e. 31.10.1995. Version of this witness is supported by version of Shiv Ratan Prajapati (PW-6) who was teacher in Sarswati Shishu Mandir, Podi who recorded date of birth of the prosecutrix on information of his father. School Register (Ex. P/6) is proved by the teacher and according to the school register, date of birth of the prosecutrix is 31.10.1995.
8. As date of birth of the prosecutrix is proved to be 31.10.1995, she was minor at the time of incident i.e. on 21.09.2010. As her age is below 18 years, she cannot be taken without consent of her guardian, but in the present case, consent of the guardian was not obtained by the appellant, therefore, it is a case of taking of minor from lawful guardianship without consent of guardian. The act of the appellant falls within mischief of Section 363 of IPC, 1860 and the conviction is hereby affirmed.
9. The appellant has suffered jail sentence from 20.12.2010 to 30.09.2011 before order of release by this Court. He has already suffered jail sentenced of more than 9 months.

Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount shall remain intact.

10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun