

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 482 of 2011

Chandra Kumar Banjare, S/o- Shri Sukhacharan Banjare, Aged about- 20 years, R/o- Village Hathanikhurd. Police Station- Pathriya, District- Bilaspur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, Thorugh- Police Station Pathariya, District- Bilaspur (C.G.) **---- Respondent**

For appellants : Mr. A.K. Yadav, Advocate

For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

17/01/2020

1. This appeal is preferred against the judgment dated 29th of June, 2011, passed by Sessions Judge, Bilaspur (C.G.) in Special Criminal Case No.49/2009, wherein the said Court convicted the appellant for charge under Sections 363 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 2 years and fine of Rs. 500/- with default stipulations.
2. In the present case, prosecutrix is (PW-4). As per version of the prosecution, the prosecutrix was minor on the date of incident i.e. 7th of April, 2009. The prosecutrix had gone bank for taking scholarship with her friend and after taking the same, she went Raipur with the present appellant along with co-accused namely Monu @Ashok Yadav. It is alleged that both appellants have taken the prosecutrix to the various places without consent of her guardian, that is why matter was reported, investigated, charge-sheeted and Court convicted the appellants as mentioned above.

3. Learned counsel on behalf of appellants submits that presence of present appellant in crime in question is not established and appellant has not committed offence under Section 363 of IPC. The trial Court has over-looked the delay in lodging First Information Report and also over-looked that prosecutrix was consenting party. The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. As appellant Chandra Kumar Banjare is convicted under Section 363 of IPC, 1860 for kidnapping the prosecutrix from her lawful guardianship, the prosecution is under obligation to establish that prosecutrix was below 18 years of age on the date of incident i.e 7th of April, 2009. Smt. Nandani Tripathi (PW-2) who is superintendent of Girls School, deposed before the trial Court that date of birth of prosecutrix is recorded on the basis of transfer certificate of class 5th and according to that transfer certificate date of birth of prosecutrix is 2nd of May, 1994. From the evidence of this witness, it is clear that she has not made entry in register because the prosecutrix has not studied in that school from class 1st. It is also not clear that who admitted the prosecutrix in class 1st. From the evidence, it is also not clear as to who brought the prosecutrix

to the school for admission. In absence of evidence of father and mother regarding admission of prosecutrix in school and other school register of class 1st whatever the date of birth is recorded in middle school is not proved by the evidence. Uttam Prasad Dahariya (PW-7) is father of the prosecutrix. This witness has not deposed about date of birth of the prosecutrix. He deposed that year of birth of prosecutrix is 1993 but version of this witness is contradictory to the school register which was brought by Smt. Nandani Tripathi (PW-2) in which year of birth was mentioned as 1994.

6. Looking to the contrary evidence, it is not established that what is real date of birth of the prosecutrix. Dr. Archana Singh (PW-9) who took X-ray of the prosecutrix for determination of her age, deposed before the trial Court that age of the prosecutrix may be between 14 to 16 and 1/2 years of age. This witness had admitted in cross examination that there may be variation in age of prosecutrix about 2 to 3 years. From her assessment, if 3 years variation is possible then age of the prosecutrix may be between 19 to 19 and 1/2 years. Therefore, entire evidence does not establish that prosecutrix was below 18 years of age on the date of incident. The trial court has already acquitted the appellant for other charges.
7. Looking to the evidence, adduced on behalf of the prosecution regarding age of the prosecutrix, charge under Section 363 of IPC is not established against the present appellant. Appellant is acquitted of the charge under Section 363 of IPC

and his conviction and sentence awarded by the trial Court to the appellant is also hereby set-aside.

8. Accordingly, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle