

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 914 of 2002**

- Jeetu @ Jitendra Talreja S/o Jethamal Talreja aged about 27 years, R/o Village Chhotapara, Near Masjid Raipur.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station -Tikarapara Raipur, (C.G.).

---- Respondent

For Appellant	: Shri Manoj Parnjpe, Advocate alongwith Shri Vivek Mishra, Advocate
For Respondent/State	: Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****20/01/2020**

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.07.2002, passed by the First Additional Session Judge, Raipur, C.G. in ST No. 30/2001, convicting the accused/appellant under Sections 363 of IPC and sentencing him to undergo rigorous imprisonment of one year with fine of Rs. 500/-, in default of payment of fine, to further undergo rigorous imprisonment of six months.
2. Brief facts of the case are that on 22.12.2000, at around 1.00 pm the appellant kidnapped the prosecutrix aged about 15 years who was living with her maternal grand-father (*Nana*) without prior permission of

any of the family members of the prosecutrix. FIR (Ex.P/7) was lodged by Shri H. L. Tiwari, Assistant Sub-Inspector on the basis of one missing report Ex. P/9 lodged by Jagdish Prasad, maternal grandfather of the prosecutrix. During investigation prosecutrix was recovered from Gandhi Bag, Nagpur from the house of relative of the prosecutrix Namely- Kailash Lilediya (PW10) vide Ex. P/6.

3. After investigation charge-sheet under Sections 363 & 366 of IPC was filed against the accused/appellant. After filing of charge-sheet, trial Judge framed charge against the accused under Sections 363 & 366 of the Indian Penal Code. Accused denied the charges framed against him and prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses namely-. Naresh Kumar Agrawal (PW01), Pushpa Bai (PW02), Neelam (PW03), Arun Dubey (PW04), Kailash Agrawal (PW05), Prabha Trivedi (PW06), Horalal Tiwari (PW07), Jagdish Prasad (PW08), Raj Khatri (PW09), Kailash Gulabchand Lilediya (PW10) and Aalekh Kumar Bhoi (PW11). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The accused/appellant has taken defence that he has taken the prosecutrix after obtaining the prior permission of mother of the prosecutrix. He has also taken a plea that one Naresh Kumar Agrawal (PW-01), who is brother of Pushpa (mother of the prosecutrix) and maternal uncle of the prosecutrix, borrowed the loan of Rs. 10,000/- from the accused/appellant and when he (accused/appellant) demanded the

said amount he refused to repay the said amount and dispute arose between the parties, as a result thereof, the accused/appellant has been falsely implicated in the crime in question. No defence witness has been examined on behalf of the appellant/accused.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

6. Learned counsel for the appellants submits that prior to the incident, there was good relations between the accused/appellant and the family of the prosecutrix, due to some trivial issue, the dispute arose between them and this false case has been registered by the family of the prosecutrix against the appellant. He also submits that there is no independent witness who supported the case of the prosecution. He further submits that there are several contradictions and omissions found in the statements of prosecution witnesses, therefore, it is prayed that the appellant may be acquitted of the charge leveled against him. He alternatively submits that if this Court comes to the conclusion that the appellant found guilty of the offence under Section 363 of IPC, considering the fact that the incident occurred on 22.12.2000, near about 19 years lapsed and the manner in which the incident took place, the age of the appellant at the relevant time and he remained jail for about 81 days, it is prayed that give him benefit of probation of offender Act and his (appellant) jail sentence is reduced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment it has been

argued by the State counsel that in this case as per statement of Pushpa Bai (PW-2), mother of the prosecutrix, date of birth of the prosecutrix is 12.02.1985, which remained un-controverted in her cross-examination. He also submits that as per marksheet of prosecutrix (Ex.P-3), her date of birth is 12.02.1985. At the time of incident, the prosecutrix was below 18 years of age and this fact is proved beyond all reasonable doubt. He further submits that prosecutrix has specifically stated in her statement that firstly the appellant had taken her to Khushalpur and then taken to Nagpur. There is no evidence adduced by the appellant to prove this fact that he had taken the prosecutrix with the consent of her mother- Pushpa Bai or any other family members. He also submits that the allegation that the maternal uncle of the prosecutrix has borrowed the loan from the accused/appellant was also not proved by the appellant by adducing any cogent and clinching evidence, therefore, the learned trial Court has rightly convicted and sentenced the accused/appellant for the aforesaid offences.

8. Heard counsel for the respective parties and perused the material on record.

9. As regards the age of the prosecutrix, the prosecutrix (PW03) has stated that she was born in the year 1985. Pushpabai (PW02), mother of the prosecutrix states that the date of birth of the prosecutrix is 12.02.19985. Jagdish Prashad (PW08) maternal grand-father of the prosecutrix also states that the prosecutrix was aged about 15 years at the time of incident. The aforesaid evidence of the witnesses remained uncontroverted in the cross-examination. This apart Horalal Tiwari

(PW07), Investigating Officer has also seized the primary mark-sheet (Ex. P/3-c) and has proved the same which bears the date of birth of the prosecutrix as 12.02.1985. Such certificate vide Ex. P/3-C has also been duly proved by Prabha Trivedi (PW06), Principal of the school where the prosecutrix studied. 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.

10. Now this Court has to see whether the prosecutrix was taken away by the appellant from the lawful guardianship of her parents without their consent. As per statement of Jagdish Prashad (PW 08), maternal grand-father of the prosecutrix, at the time of incident, the prosecutrix was living with him in his house in cross-examination he admits that the appellant used to visit in his house and help his daughter- Pushpabai (PW02) (mother of the prosecutrix) in her work. The fact of the prosecutrix living with Jagdish Prashad (PW08) has also been proved by Pushpabai (PW02) and Naresh Agrawal (PW01) and the appellant has also admits in his statement under Section 313 Cr.P.C. that at the time of incident, the prosecutrix was living with Jagdish Prasad (PW08).

11. Prosecutrix (PW03) has stated that on the date of incident while she was going from the house of her maternal grand-father to some other house, on the way the appellant met her and took her to Kushalpur and thereafter to Nagpur in the house of his sister. Thereafter, the appellant took her to the house of his friend at Nagpur and at about 9-10 pm her maternal uncle Kailash Agrawal (PW05) came their and took her with them to the house of her maternal uncle.

She states that on the next date her maternal uncle came to Nagpur and with him she returned to Raipur and that the appellant also came with them to Raipur. In cross-examination there is no suggestion by the defence that the prosecutrix was taken away with the appellant with the consent of the parents of the prosecutrix.

12. The statement of the appellant under Section 313 Cr. P. C. he has taken a defence that he had taken the prosecutrix with the consent of her mother, Pushpabai (PW02) to the house of his brother-in-law at Nagpur. Pushpabai (PW02) mother of the prosecutrix has categorically denied the suggestion that she had given the consent to the appellant for taking her daughter to Nagpur. However, from the evidence on record it has already been proved that at the time of incident, prosecutrix was not living with her mother, Pushpabai (PW02) but was living with Jagdish Prashad (PW08) at Gabrapara Colony, Raipur. The appellant has nowhere stated that he took away the prosecutrix with the consent of Jagdish Prashad (PW08).

13. Missing report (Ex.P/9-C) was lodged by Jagdish Prashad (PW08) on 22.12.2000, stating therein that the prosecutrix has run away without informing anybody since 22.12.2000. After inquiry on the missing report, during investigation it was found that the prosecutrix was with the appellant at Nagpur and thereafter she was recovered from the house of Kailash Gulabchand Lelediya (PW10).

14. In his statement under Section 313 Cr. P. C. the appellant has also taken a defence that Naresh Agrawal (PW01) had borrowed Rs. 18,000/- from him and when he demanded the money back, he has falsely implicated him in this offence in connivance with Pushpabai

(PW02). However, Naresh Agrawal (PW01) has categorically denied in para 7 of his cross-examination that he has to repay Rs. 10,000/- to the appellant which was borrowed by him.

15. It has also come in the evidence of prosecution witnesses that relations with the appellant and family of the prosecutrix were cordial, the appellant used to visit the house of the prosecutrix as well as her maternal grand-father house and he also used to help the mother of the prosecutrix in her work, therefore, there seems to be no occasion for the prosecutrix or her family members to falsely implicate the appellant in this crime.

16. Thus, looking to the statement of Pushpabai (PW02), prosecutrix (PW03), Jagdish Prasad (PW08) and Naresh Agrawal (PW01) 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 appellant from lawful guardianship of Jagdish Prashad (PW08) without obtaining consent of Jagdish Prashad or mother of the prosecutrix, Pushpabai (PW02). Therefore, conviction of the appellant recorded by the trial Court is based upon just & proper appreciation of evidence available on record and needs no interference by this Court.

17. So far as the sentence part is concerned considering the facts & circumstances of the case the fact that the incident took place around 19 years ago, the appellant has no criminal antecedent, the appellant is facing trial since 2000 and he has already remained jail for a period of 81 days and at present he is on bail, the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine

amount has been deposited as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that in the present case also no useful purpose would be served in again sending him back to jail at this stage and the ends of justice would be served if he is sentence to the period already undergone by him while keeping the fine sentence with default stipulation intact.

18. Resultantly, the appeal is allowed in part. While, maintaining conviction of the appellant under Section 363 of IPC, he is sentenced to the period already undergone by him, however, the fine amount imposed upon him with default sentence by the First Additional Judge shall remain intact. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C..

Sd/-

(Gautam Chourdiya)
Judge