

Criminal Appeal No.1210 of 2001

- Appellants**

State Of Chhattisgarh through the Police Station Dhamda,
Distt. Durg Chhattisgarh

---- Respondent

For the Appellants : Shri Santosh Bharat and Shri Chandra
Bhushan Kesharwani, Advocates
For the Respondent/State : Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

31.01.2020

1. The appeal is preferred against judgment dated 29.11.2001 passed by First Additional Sessions Judge, Durg (CG) Session Trial No.363/2001 wherein the said Court convicted the appellants for the commission of offence under Sections 363, 366, 323 read with Section 34 and 506 Part-II of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for 03 years and to pay fine of Rs.200/-; RI for 05 years and to pay fine of Rs.200/-; RI for 03 months and RI for 01 year respectively with default stipulations.
2. During the course of the appeal, appellant No.2-Naresh died and his appeal stands finally abated.

3. In the present case, prosecutrix is PW-1. As per the version of the prosecution, on 24.8.2001 the prosecutrix returned to her parental home from her matrimonial home and on that day when she went out from her house and reached near the canal, both the appellants stopped her, assaulted and thereafter they took her towards village Pendra. The matter was reported, investigated and after completion of the trial, they were convicted as mentioned above.

4. Learned counsel for the appellant submits as under:

(i) There is no evidence that the prosecutrix was minor on the date of incident, therefore, charge under Section 363 IPC is not established.

(ii) There is no evidence that any of the appellant seduced the prosecutrix for illicit intercourse or to marry, therefore, charge under Section 366 IPC is not made out.

(iii) The evidence of the prosecution witness is contradictory in nature, therefore, charge under 323 and 506 Part-II IPC is also not made out.

(iv) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court may be set aside.

5. 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the judgment impugned.

7. To substantiate the charges, the prosecution has examined as many as 07 witnesses. No one deposed before the trial Court that age of the prosecutrix was below 18 years on the date of incident, i.e. 24.8.2001. No birth certificate or school certificate was produced and proved to establish the age of the prosecutrix. Sukbai (PW-5) is the mother of the prosecutrix, but she did not deposed regarding age of the prosecutrix. In absence of any documentary, oral or radiological evidence, age of the prosecutrix is not proved to be below 18 years on the date of incident.

8. For commission of offence under Section 363 IPC, it has to be established that the prosecutrix was minor on the date of incident and she was taken out from the lawful guardianship without consent of the guardian, but the same is not established by the evidence, therefore, charge under Section 363 IPC is not established. There is no evidence that any of the appellants has seduced the prosecutrix for illicit intercourse or marriage, therefore, charge under Section 366 IPC is also not established.

9. Though the prosecutrix deposed before the trial Court that both appellants threatened her to kill, but from her evidence, it is not clear that the appellant was determined to execute the threat. For commission of offence under Section 506 IPC, it has to be established that the person who is giving threat was determined to execute the threat and the words uttered were mere fury which

has sound but has no substance. Therefore, in absence of determination, charge under Section 506 Part-II is not established.

10. As per the version of the prosecutrix (PW-1), the appellants assaulted her by hands and fists. Version of this witness is supported by Dr. PD Chandravanshi (PW-7), who examined the prosecutrix on 24.8.2001 at Primary Health Centre, Dhamda and noticed simple injury on her back which was caused within 6-8 hours of the examination. The injury was simple in nature. Taking into consideration the evidence of the prosecutrix and in support of the medical evidence, it is established that the appellant assaulted the prosecutrix. His case does not fall in any of the exception and he knew that his act will cause pain in the body of the prosecutrix. Act of the appellant is voluntary in nature and voluntarily causing simple injury is an offence under Section 323 of IPC for which the trial Court convicted him and the same is hereby affirmed.

11. The trial Court awarded sentence of three months for offence under Section 323 IPC and the appellant has already suffered the jail term of more than three months. Therefore, his sentence part is not liable to be interfered with as he has already suffered jail term of three months.

12. In view of the above, conviction and sentence of the appellant under Sections 363, 366 and 506 Part-II IPC is hereby set aside and he is acquitted of the said charges. The appellant is reported to be on bail. His bail bonds shall continue for further

period of six months from today as per the terms of Section 437A of CrPC.

13. With these modifications, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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