

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-01-2020

Delivered on 17-02-2020

CRA No. 473 of 2001

- Lali @ Roopkeshwar s/o. Hirasay, aged about 22 years, r/o. Village Makarbandha, Police Station Ramanujnagar, District Surguja (CG).

---- Appellant.

Versus

- The State of Chhattisgarh through Police Station Baikunthpur, District Koriya.

---- Respondent

 For Appellant : Mr. Alok Kumar Dewangan, Adv.

For respondent/State : Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-4-2001 passed by the Additional Sessions Judge, Baikunthpur (CG) in Sessions Trial No. 254 of 2000 wherein the said Court has convicted the appellant for commission of offence under Sections 363, 366 and 376 of the IPC, 1860 and sentenced him to undergo rigorous imprisonment for three years, RI for three years and RI for ten years. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/3. As per version of prosecution on the date of incident i.e., on 6-2-2000 appellant

abducted prosecutrix from weekly market of town Baikunthpur and she was subjected to sexual intercourse. 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) Prosecutrix (PW/3) deposed before the trial court that she moved with the appellant in bus to village Sringar and stayed with him in his room. She again stayed with the appellant in village Makarbandha which shows that she is a consenting party.
- ii As per version of Dr. Ashish Karan (PW/2), he conducted the ossification test of the prosecutrix and found her age above 18 years, therefore, prosecutrix was major on the date of incident and she was a consenting party.
- lii) The trial court has not evaluated the entire evidence in its right perspective, therefore, finding of the trial court is liable to be set aside.

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. Dr. Ashish Karan (PW/2) deposed (para 2) before the trial court that he took x-ray of prosecutrix on 23-6-2000 . As per x-ray plate (Ex.P/3) he found joints of left elbow and left wrist. This witness assessed the age of the prosecutrix more than 18 years. This witness is prosecution witness and his version is unrebutted during cross examination and there is no contrary opinion regarding age of the prosecutrix, therefore, from the statement of this medical expert, it is found that the age of the prosecutrix is more than 18 years and she was major .

7. Prosecutrix (PW/3) deposed before the trial court that the appellant took her when her parents left at market. As per version of this witness she went with the appellant in a bus to village Srinagar and thereafter she went with the appellant in a cycle at village Chindia in the house of one Prakash Kanwar. As per version of this witness, she was sleeping with the appellant where she committed sexual intercourse with her. As per version of this witness, she stayed with the appellant in the house of Prakash for four days and thereafter he took her to village Makarbandha where she stayed in the house of the appellant for one day and in that house also appellant committed sexual intercourse with her and thereafter she came back by bus.

8. From the evidence of the prosecutrix, it is clear that she stayed with the appellant in many places where intercourse is committed by the appellant. She deposed (para 10) that she did not narrate to anyone that the appellant committed intercourse with her. Taking into consideration the fact that she has not complained to anyone regarding act of the appellant, it is difficult to hold that relation maintained by the appellant was without her consent or against her will, therefore, it cannot be said that she was seduced to illicit intercourse. Charges leveled against the appellant are not proved and the finding of the trial court is not sustainable.

9. Accordingly, the appeal is allowed. Conviction and sentence imposed by the trial court is set aside. The appellant is acquitted of the charges framed against him. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju