

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 524 of 2010

- Luran Singh @ Nuran, Age 26 years, S/O Shri Kushal Singh, R/o Village-Pilwapali, P.S. Saraipali, District – Mahasamund (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Pithora, District – Mahasamund (C.G.)

---- Respondent/State

For Appellant	:	Shri J.A. Lohani, Advocate
For Respondent/State	:	Shri Rakesh Sahu, Deputy Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

04.11.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 22.07.2010 passed by the Sessions Judge, Mahasamund (C.G.) in Sessions Case No. 22/2010, whereby the Appellant stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of Indian Penal Code (in short 'IPC')	R.I. for four years and pay a fine of Rs.2,000/-, in default of payment to undergo S.I. for four months
Under Section 366 of IPC	R.I. for four years and pay a fine of Rs.2,000/-, in default of payment to undergo S.I. for four months
Both the sentences to run concurrently	

3. The allegation against the appellant is that on 10.02.2010 the prosecutrix

(PW-2), aged about 15 years, was kidnapped by the accused/appellant from the lawful guardianship of her parents and taken to Village Chimarkel, Chiprikon, Saliyabhata, Beltekri and Pilwapaali where he committed sexual intercourse with her against her will and promised her to marry. Missing report was lodged on 14.02.2010 at about 12:35 pm before Police Station Pithora by PW-3 Mohd. Haneef (father of the prosecutrix) which was recorded in *Roznamchasahana* No. 495 as Missing Person Report No. 05/2010 vide Ex.-P/16(C).

4. During inquiry, on getting information regarding the prosecutrix being in the house of the appellant at Village Pilwapali, the Head Constable No.98 Shyam Sunder (PW-5) was sent for inquiry and he recovered and brought the prosecutrix vide recovery-*panchnama* Ex.-P/1 dated 05.03.2010. On the basis of missing person report, F.I.R. (Ex.-P/15) was registered on 05.03.2010 under Sections 363, 366 and 376 of IPC against the appellant by PW-11 Lal Bahaddur Singh, Assistant Sub-Inspector. In further investigation, spot map (Ex.-P/2) was prepared by PW-11 and another spot map (Ex.-P/3) was prepared by PW-8 Bhagat Ram Thakur, Patwari. Underwear of the prosecutrix was seized vide seizure memo Ex.-P/5. Birth and death register (*Kotwari-Panji*) of the prosecutrix was seized from PW-9 Brujlal Chauhan, Kotwar, vide Ex.-P/14(C).
5. Prosecutrix (PW-2) was sent for medical examination to Community Health Center, Pithora on 05.03.2010 vide Ex.-P/18. PW-7 Dr. Taara Agrawal examined the prosecutrix and gave her report Ex.-P/12 and opined that no external injury present over the body of the prosecutrix and there is no sign of recent sexual intercourse, but she opined that she was habitual to sexual intercourse. Doctor also prepared two slides from vaginal swab for chemical examination of the same.
6. Accused/appellant was arrested on 05.03.2010 vide arrest memo Ex.-P/22

and was sent for medical examination to Community Health Center, Pithora vide Ex.-P/19. PW-6 Dr. Mohan Singh Kanwar examined the appellant, gave his report Ex.-P/10 and opined that the appellant is able to perform sexual intercourse. PW-6 also prepared semem slide of the appellant for chemical examination of the same. Underwear of the appellant was seized vide Ex.-P-P/6. As per Ex.-P/7, after examination of the prosecutrix and the appellant in CHC, Pithora, underwear of the prosecutrix stained with semen and slides from vaginal swab were seized and likewise, underwear of the appellant stained with semen & semen slide were seized. Seized articles were sent for examination to Forensic Science Laboratory, Raipur.

7. After completion of investigation charge-sheet was filed by the police against the appellants/accused for the offence under Sections 363, 366 and 376 of IPC. While framing the charge, the Sessions Judge, Mahasamund (C.G.) framed the charges against the appellant under Sections 363, 366 and 376(1) of IPC which were denied by him and he prayed for trial.
8. So as to hold the accused/appellant guilty, the prosecution examined 11 witnesses i.e. PW-1 Guman Singh, PW-2 Prosecutrix, PW-3 Mohd. Haneef, PW-4 Shyamlal, PW-5 Shyam Sunder Chandrakar, PW-6 Dr. Mohan Singh Kanwar, PW-7 Dr. Taara Agrawal, PW-8 Bhagat Ram Thakur, PW-9 Brujlal Chauhan, PW-10 Rajesh Kumar Diwan and PW-11 Lal Bahaddur Singh in support of its case. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him, pleaded his innocence and false implication in the case. No defence witness has been examined by the accused/appellant.
9. After appreciation of the evidence available on record, the Sessions Judge, Mahasamund (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 376(1) of IPC, convicted and sentenced the accused/appellant as mentioned in para-2 of this judgment,

hence this appeal.

- 10.** Learned counsel for the appellant submits that there is no any independent witness to prove this fact the appellant kidnapped the prosecutrix from the lawful guardianship of her parents and there is no any conclusive proof of date of birth of the prosecutrix. He further submits that looking to contradictory statement of father of the prosecutrix, the prosecution has failed to prove the guilt of the appellant in crime in question. Therefore, the Sessions Court has wrongly convicted and sentenced the appellant under the aforementioned Sections of IPC. He also submits that the appellant has already been released from jail after completion of his entire sentence awarded to him by the Sessions Court.
- 11.** On the other hand, learned counsel for the State supporting the impugned judgment submits that the prosecutrix was 16 years, 07 months & 06 days at the time of incident and as such, she was below 18 years of age as held by the Sessions Court and there is no illegality or infirmity in said findings arrived at by the Sessions Court.
- 12.** Heard learned counsel for the parties and also perused the records of the Sessions Court.
- 13.** First, this Court shall examine whether on the date of incident, the age of the prosecutrix (PW-1) was below 18 years?
- 14.** PW-3 Mohd. Haneef, father of the prosecutrix, has stated in para-1 of his deposition that the age of her daughter (prosecutrix) is in between 15-16 years and that fact is uncontroverted in cross-examination.
- 15.** PW-9 Brujlal Chauhan, Kotwar of the village, has proved this fact that as per entry made in birth & death register Ex.-P/14(C), date of birth of the prosecutrix is 04.07.1993 and he has duly proved Ex.-P/14(C) and its seizure memo Ex.-P/8.
- 16.** Therefore, considering the evidence of PW-3 Mohd. Haneef, PW-9 Brujlal

Chauhan as also birth & death register- Ex.-P/14(C) which has been duly proved by PW-9, there is no reason to disbelieve the entry made in birth & death register and the Sessions Court has rightly given the finding that on the date of incident the prosecutrix (PW-2) was 16 years, 07 months & 06 days and below 18 years of age.

17. Missing person report was lodged vide Ex.-P/16(C) and thereafter F.I.R. (Ex.-P/15) was lodged which have been duly proved by PW-11 Lal Bahaddur Singh, Assistant Sub-Inspector and that fact is also proved by PW-3 Mohd. Haneef, father of the prosecutrix and the above evidence remained uncontroverted in cross-examination of PW-3.

18. PW-2 Prosecutrix has stated in her deposition that the appellant was resident of different village, he used to talk with her over phone about 06-07 months prior to recording of her evidence and propose her for marriage. Two months thereafter, she eloped with the appellant. PW-2 has admitted in her deposition in para-14 that she was minor, therefore, her marriage with the appellant was not solominized.

19. PW-3 Mohd. Haneef, father of the prosecutrix, has stated that her daughter (prosecutrix) was missing, then he informed the police. PW-3 further stated that he got information that his daughter is in the house of appellant and he gave information to the police. On the basis of said information, he alongwith two police personnel went to Village Pilwapali in the house of the appellant, where he found her daughter, thereafter, brought her daughter to police station from the house of the appellant. PW-3 is the witness of Ex.-P/2 spot map, Ex.-P/5 seizure of underwear of the prosecutrix & Ex.-P/6 seizure of underwear of the appellant and it has duly been proved by him. PW-3 has denied in para-6 that her daughter (prosecutrix- PW-2) had willingly gone with the appellant.

20. In the instant case, the prosecutrix (PW-2) was missing from 10.02.2010 and

as per recovery-panchnama (Ex.-P/1), she was found on 05.03.2010 in the house of Kushal Ram (father of the appellant), for about 23 days the prosecutrix was living with the appellant in his house. The Sessions Court has rightly acquitted the appellant of the charge under Section 376 (1) of IPC and looking to the age of the prosecutrix i.e. 16 years, 07 month & 06 days at the time of incident below the 18 years, rightly convicted and sentenced the appellant of the charges under Sections 363 & 366 of IPC.

21. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed. Conviction of the appellant under Sections 363 and 366 of IPC and sentence awarded thereunder by the Sessions Court are hereby affirmed. A report has been received from the Court of Sessions Judge, Mahasamund (C.G.) dated 12.10.2020/15.10.2020 about the status of the appellant. It is stated in that report that the accused/appellant- Luran Singh @ Nuran, S/o Kushal Singh, has already been released from the jail on 19.12.2018 after completion of his entire sentence awarded to him by the Sessions Court, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-
(Gautam Chourdiya)
Judge