

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 709 of 2006

Amin Rajgond, Aged 20 years, S/o. Padman Rajgond, R/o. Siltara (Bhatapara) P.S. Dhasiba, District Raipur, Present Address near Kendri Railway line Dera, P.S. Abhanpur District Raipur (CG)

---- Appellant

Versus

State of Chhattisgarh through SO, PS Abhanpur, District Raipur (C.G.)

---- Respondent

For Appellant : Ms. Savita Tiwari, Advocate.
For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

01.09.2020

As per prosecution story, on 10.09.2005 at about 7.00 PM., complainant (PW-1), a minor girl aged about 16 years, was returning to her house after answering the call of nature. On the way, the appellant met her and on the pretext of marriage, the appellant took her to Mana where he committed rape with her. Thereafter the appellant took her to village Siltara in an auto, and instead of taking her to his friend's house aimlessly wandered with her throughout the day from one place to other place. On the next day, when he was going to village Kendri from village Sankara, they were caught by the parents of victim (PW-1)

where she disclosed the incident to her aunt, mother and brother and then the report was lodged. Based on this FIR (Ex.P-3), offences under Section 363, 366 and 376 IPC were registered against the accused/appellant. Victim (PW-1) was medically examined on 13.09.2005 vide Ex. P-8 by Dr. S.D. Kenwat (PW-11). After completion of investigation, charge sheet was filed under the same sections against the appellant followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 21.06.2006 passed in Sessions trial No. 354/2005 acquitted the accused/appellant under Section 376 IPC but has held him guilty under Section 363 and 366 IPC with imposition of sentence of three years RI and to pay fine of Rs. 500/- under Section 363 IPC and RI for three years and to pay fine of Rs. 500/- under Section 366 IPC with default stipulations. Hence, this appeal.

3. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution. As a last resort counsel for the appellant submits that if this Court does not interfere with the conviction part of the judgment impugned at least the sentence imposed on him may be reduced to the period already undergone.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly

in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. After hearing counsel for the parties and taking into consideration the evidence of the witnesses in particular that of the complainant (PW-1), this Court is of the considered opinion that the accused/appellant abducted the complainant (PW-1) with an intention of forcing her to enter into a marriage and took her to different villages like Mana, Siltara, Dhanoli and Kendri where she aimlessly wandered with the appellant from one place to another place. Complainant (PW-1) has disclosed this fact that the appellant took her to village Dhanoli in a bus. Complainant (PW-1) has stated that J.K. Dhruv -friend of appellant informed her parents about the incident and handed her over to the parents. From the evidence of the victim (PW-1), it is clear that victim (PW-1) was all alone along with the appellant during the said period. Statement of the complainant (PW-1) has also been supported by that of her parents PW-2, PW-3 and PW-4. Since the medical examination of the complainant (PW-1) was done 5 days after the incident, the doctor (PW-11) did not find any injury on her body yet he has stated that she was complaining pain on her face vide report Ex.P-8. Investigating Officer has also supported the case of the prosecution. Though the prosecutrix has not stated anything against the accused/appellant yet from her evidence it emerges that he had taken her away when she had not attained majority, on the pretext of

marrying her, he cannot escape the rigor of Section 363 and 366 IPC for removing her from the lawful guardianship after putting her on a false assurance of marriage. The factum of prosecutrix being minor on the date of incident is evident from her birth certificate which has been seized under Ex.P-22 showing her date of birth as 10-12-1988. This evidence regarding age remained unrebutted all throughout by the defence.

7. In view of the aforesaid factual discussion in the light of the evidence of the witnesses, this Court does not see any legal flaw in the well reasoned judgment impugned passed after considering all aspects of the matter, convicting the accused/appellant under Section 363 and 366 IPC. Conviction of the accused/appellant is thus maintained.

8. However, looking to the incident being of the year 2005, and that since then the accused/appellant has already faced a long drawn prosecution and even the appellant remained inside about three months, interest of justice, in the opinion of this Court, would be served if his sentences are reduced to the period already undergone. Order accordingly.

9. Appeal is thus allowed in part to the extent indicate above. As the appellant is already on bail, his bail bond stand discharged.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh