

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 799 of 2011

1. Tikeshwar Suryawanshi, S/o- Bahursingh Suryawanshi, Aged about- 20 years.
2. Sandeep Kumar, S/o- Bisnath Sahu, Aged about- 22 years.
3. Gajendra Kumar, S/o- Gaiindlal Teram, Aged about- 23 years.

All are R/o- Village Chediya , Police Station Gurur, District- Durg (C.G.)
---- Appellants

Versus

State of Chhattisgarh, Through- Police Station Gurur, District- Durg (C.G.)
---- Respondent

For appellants	: Mr. Praveen K. Dhurandhar, Advocate
For State	: Mrs. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

10.02.2020

1. This appeal is preferred against the judgment dated 17th of October, 2011 passed by Additional Sessions Judge, Balod, District- Durg (C.G.), in Sessions Trial No.60/2011 wherein the said Court convicted the appellants for charge under Sections 366 and 363 of Indian Penal Code, 1860 and sentenced them to undergo R.I. for 7 years and fine of Rs. 50/-, R.I. for 7 years and fine of Rs. 50/-, with default stipulation. The appellant No.1-Tikeshwar Suryawansi has been additionally convicted under Section 354 of I.P.C. and R.I. for 2 years.
2. In the present case, prosecutrix is (PW-5). As per version of the prosecution, the appellants have taken the prosecutrix who is minor, from custody of her lawful guardianship without consent of her guardian on the date of incident that i.e 15th of July, 2010. In addition, the appellant Tikeshwar was charge-sheeted for commission of rape. The matter was reported and

investigated and the appellants were charge-sheeted as mentioned above.

3. Learned counsel for the appellant submits that there is no evidence against the appellants Sandeep Kumar and Gajendra Kumar for taking the minor prosecutrix. Again, there is no evidence against them for seducing her for illicit intercourse. There is no evidence against the appellant No.2 Sandeep Kumar and appellant No.3 Gajendra Kumar in participation in crime therefore, their conviction is not permissible under the law. The evidence adduced by the prosecution is full of material contradiction and omissions but trial Court has over-looked the same and recorded finding of conviction which is not liable to be sustained. The age of the prosecutrix has not been proved to be below 18 years on date of incident. Therefore, finding of the trial Court is liable to be set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The first question for consideration of this Court is whether the prosecutrix was minor on the date of incident i.e. 15th of July, 2010. Ishwar Lal (PW-4) is father of the prosecutrix, as per version of this witness the prosecutrix is born in the year of 1994 and she has been admitted in school by him. One birth certificate was produced before the trial Court as per seizure Ex.P-8 in which date of birth of the prosecutrix is mentioned as 11th of May, 1994 while the date of incident is 15th of July,

2010. Taking into consideration the statement of father of the prosecutrix and birth certificate, it is established that prosecutrix was below 18 years of age on date of incident i.e. 15th of July, 2010 therefore, she is minor. As per version of the prosecutrix (PW-5) Tikeshwar came to her, pressed her mouth and made her sitting in motorcycle forcefully. Version of this witness was unrebutted during cross-examination. From the statement of prosecutrix, it is clear that appellant No.1-Tikeshwar used force against her and committed bad work with her. The trial Court recorded finding that report regarding intercourse was not made and it was made regarding commission of offence under Section 354 of IPC in F.I.R. as per Ex.P-5. Therefore, it may be a case of Section 354 of I.P.C.

6. Finding of the trial Court is one of the plausible view and same is not challenged before this Court by state. Therefore, finding recorded by the trial Court has attained its finality.
7. From the evidence of the prosecutrix, it is clear that it is appellant Tikeshwar who kidnapped her to seduce her for illicit intercourse and try to outrage her modesty by using criminal force. Version of the prosecutrix is supported by version of Dr. Shashi Valadius (PW-1) who noticed injury on the body of the prosecutrix and again it is supported by version of her father namely Ishwar Lal (PW-4) and Komalram (PW-7). All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the defence. Looking to the totality of fact, commission of offence by appellant No.1 Tikeshwar under Section 366, 363 and 354

of I.P.C. is established, therefore, argument advanced on behalf of appellant No.1-Tikeshwar is not sustainable and his conviction for the said offence is hereby affirmed.

8. The prosecutrix did not depose that appellants namely Sandeep Kumar and Gajendra Kumar used any force to take her from lawful guardianship, she did not depose any overt act of these appellants. She also did not depose that these two appellants have seduced her for illicit intercourse or committed any criminal force. Taking into consideration, the totality of fact that charges levelled against these two appellants is not established in absence of sufficient evidence. Therefore, their conviction is not sustainable and they are acquitted of the said charges. Their conviction and sentence is hereby set-aside.
9. The trial Court has convicted and sentenced to appellant No.1 Tikeshwar for term of 7 years which can not be said to be harsh, disproportionate and unreasonable. Therefore, sentence part is not liable to be interfered with.
10. The appeal filed by the appellant No.1 Tikeshwar is liable to be and is hereby dismissed. Appellant No.1 Tikeshwar has suffered full jail term as per report of jail authority, therefore, no further order for his arrest etc. is required.
11. Accordingly, appeal filed by the appellant No.2 Sandeep Kumar and appellant No.3 Gajendra Kumar is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge