

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 63 of 2005

Satyam @ Adham @ Santo babu, Caste – Ganda, S/o Jagmohan Nag, aged about 22 years, R/o Pandri Jaggannath Mandir, Raipur (CG) **-- Appellant**

Versus

State of Chhattisgarh, through Police Station – Civil Lines, Raipur (CG) **--- Respondent**

For Appellant	:	Mr. Keshav Dewangan & Mr. Sanjay Agrawal, Advocates.
Respondent/State	:	Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

13.08.2020

The case put-forth by the prosecution in brief is that on 21.04.2004 the accused/appellant took away the prosecutrix (PW-1) aged about 13 years at the relevant time alluring her on the promise of marriage. After taking the prosecutrix to Odisha he kept her in his house for 4-5 days and during this period they also had physical relations. On the date of incident the prosecutrix was in her house along with her younger sister and brother and her parents had gone to Odisha. It is stated that after her parents returned from Odisha they came to know that the prosecutrix was taken away by the accused/appellant. The prosecutrix was ultimately recovered from the native village of the accused/appellant from Odisha on 30.04.2004 vide recovery Panchnama (Ex.P-15). After medical examination of the prosecutrix and completion of other procedural formalities the *challan* was led against the accused/appellant under Sections 363, 366 and 376 (1) IPC though initially FIR was registered only under Section 363 IPC.

2. Learned Court below vide judgment impugned dated 27.10.2004 passed in Sessions Trial No.155/2004 convicted the accused/appellant under Sections 363, 366 and 376 (1) IPC and sentenced him to undergo RI for 3 years, 5 years and 7 years respectively with fine of Rs.100/- under each section, coupled with default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submit that though there are number of contradictions and omissions in evidence of the witnesses yet the Court below has not considered the same in its proper perspective and has abruptly held him guilty under Sections 363, 366 and 376 (1) IPC. According to the counsel for the appellant, there is nothing on record to show that prosecutrix was minor at the time of the incident but yet her evidence had been taken as a gospel truth though it suffers from number of discrepancies, and has held him guilty for the offence referred to above, which is illegal, arbitrary and liable to be set aside.

4. State counsel on the other hand supports the judgment impugned and submits that admittedly the age of the prosecutrix at the relevant time was about 14 years and therefore, she was minor for all practical purposes in respect of offences alleged to have been committed by the accused/appellant, and being so no infirmity or irregularity is noticeable in the judgment impugned warranting any interference with the same.

5. From the evidence of father Damrutandi (PW-2) and brother Boondatandi (PW-6) it appears that on coming to know about abduction of the prosecutrix by accused/appellant they immediately rushed to his hometown in Odisha but they were not allowed to meet

the prosecutrix and ultimately by taking help from police they were permitted to do so facilitating recovery of the prosecutrix therefrom on 30.04.2004. Likewise, mother of the prosecutrix (PW-3) has also supported the case of the prosecution stating that after arrival from Odisha the prosecutrix had informed her about being forcibly taken away by the accused/appellant and subjected to rape by him on various occasions during her stay in his house. Prosecutrix herself has stated that at the relevant time she was about 14 years of age and thus minor for the offences alleged against accused/appellant. Dr. Harish Dua (PW-4) who medically examined the accused/appellant and gave his report Ex.P-8 has stated that he was fully capable of doing sexual intercourse. Dr. Sushma Ekka (PW-20) though has opined that the prosecutrix is habitual to sexual intercourse yet for determination of her age she was referred to radiologist for ossification test. Dr. Anand Jaiswal (PW-11) is the Radiologist who vide his report (Ex.P-14) has opined that the age of the prosecutrix at the relevant was between 16 to 18 years. Even assuming for a moment that prosecutrix was a consenting party in accompanying the accused to his home state and submitting herself for physical relations with him, it has no value in the eye of law because the consent given by her is immaterial as palpably she was below 15 years of age at the relevant time. In respect of age the prosecutrix has stated in her evidence that her dated of birth is 10.05.1990 which also gets corroborated from the entries made in the school register marked as Article A-C, and if this date of birth is taken into consideration, on the date of incident she appears to have been about 14 years of age and as such minor for the offences in question. Evidence of the prosecutrix though contains minor

contradictions and omissions yet the same cannot be discarded as a whole particularly in a case where she has been subjected to kidnapping, abduction and sexual exploitation at the hands of the accused/appellant.

6. In aforesaid view of the matter it can safely be concluded that the findings recorded by the Court below convicting the accused/appellant under Sections 363, 366, 376 (1) IPC is fully justified and based on the testimony of the prosecutrix and other important witnesses examined by the prosecutrix. This Court does not see any scope of interference with the conviction of the accused/appellant and therefore, the same is hereby maintained.

7. As regards sentence, the report received from the Superintendent, Central Jail, Raipur dated 06.07.2020 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 14.11.2009, therefore, no observation regarding the sentence part is required to be made by this Court.

8. Appeal thus being without any substance is liable to be and is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
Judge