

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 742 of 2013

Dharam Das Son of Manbodhi Das, aged about 23 years,
resident of Beladula, Police Station – Jaijaipur, Civil &
Revenue District – Janjgir-Champa (CG). ---- **Appellants**
Versus

State of Chhattisgarh through the Incharge, Arakshi
Kendra Jaijaipur, Civil & Revenue District Janjgir -
Champa (CG). --- **Respondent**

For Appellant : Shri Varunendra Mishra, Advocate
For State/Respondent : Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

17/06/2020

Written report (Ex.P-12) given by the prosecutrix (PW-8) on 18.01.2012 says that 4-5 days prior thereto the accused/appellant had forcibly taken her to village Beladula on the pretext of enjoying village fair. Written report further says that after taking her to his house the accused/appellant also committed forcible sexual intercourse with her for 4-5 days. On the basis of this written report FIR (Ex.P-13) was registered against the accused/appellant under Section 376 IPC. During the course of investigation the statement of the prosecutrix (PW-8) was also recorded under Section 161 Cr.P.C. in which she has stated against other two accused persons namely Laxman and Punibai saying that when she called upon them to come to her rescue, they remained heedless to her request and asked her to stay with the accused/appellant himself. After prosecutrix being medically examined, *challan* was filed against the accused persons under Sections 363, 366, 368 and 376 IPC. The Court below however framed the charge against the accused/appellant under Sections 363, 366-A and 376 (1) whereas against the remaining two charges were framed under Sections 363, 366-A, 368 and 376/34 IPC.

2. Learned Court below vide judgment impugned dated 23.07.2013 passed in Sessions Trial No.96/2012 acquitted the accused namely Laxman Das and Punibai of all the charges levelled against them. It further acquitted the accused/appellant also of the charge under Section 376 but convicted him under Sections 363 and 366-A IPC with imposition of 5 years RI with fine of Rs.20,000/- under Section 363 and 7 years RI with fine of Rs.40,000 under Section 366-A IPC, plus default stipulations. Hence this appeal.

3. Learned counsel appearing for the appellant submits that the judgment impugned convicting the accused/appellant under Sections 363 and 366-A IPC is not based on proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. He further submits that when the other accused persons have been acquitted by the Court below on the same set of evidence, the present appellant is also entitled for the same benefit. He submits that if overall conduct of the prosecutrix is seen, right from the beginning she appears to be consenting party to the act of the accused/appellant. Lastly he submits that there are material contradictions and omissions in her statement made under Section 161 Cr.P.C. and the one recorded in the Court are seen in its entirety.

4. On the other hand, learned State counsel supporting the impugned judgment submits that the findings recorded by the Court below are strictly in accordance with law and there is no illegality or infirmity in the same warranting any interference in this appeal.

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

6. The prosecutrix (PW-8) though in her statement recorded under Section 161 Cr.P.C. has made number of allegations such as being taken by the accused/appellant perforce, subjecting her to repeated forcible sexual intercourse and making her captive in his own house, but while

deposing in the Court she has not stated anything like this, rather she has stated in favour of the accused that he did not do anything wrong with her and that she herself had gone in his company and stayed with him for 5 days. Her evidence does not at all say that she was put under any threat or intimidation by the accused/appellant though she has stated to that effect in her 161 Cr.P.C. statement and also in the written report Ex.P-12 on the basis of which FIR (Ex.P-13) came to be registered. Thus her testimony is full of contradictions and omissions and therefore difficult to be relied upon. Most of the witnesses being PW-3, PW-4, PW-5 have turned hostile. Dr. (Smt.) C.K. Singh who medically examined the prosecutrix has stated in her report that all her secondary sexual characteristics had developed and that she had sexual intercourse but no external or internal injuries on her person were noticed by this witness. Prosecutrix has also not stated about being subjected to forcible sexual intercourse by the accused/appellant and probably for that reason the accused/appellant has been acquitted under Section 376 IPC. Though the prosecutrix has not made any specific allegation showing that the accused/appellant removed her from the lawful guardianship on the pretext of marriage yet keeping in mind the fact that on the date of incident she was below 18 years of age, even if she is taken to be a consenting party as per her evidence, yet the accused/appellant cannot receive any benefit because she was not competent to give consent in accompanying him. Being below 18 years of age she can also not be expected to know the future complications arising as a result of her act in eloping with the accused and remaining in her company for about 5 days. The accused/appellant was rather supposed to know that the prosecutrix being minor should not have been taken away by him even in the case she was a consenting party because her consent, if any, in submitting herself to his wishes has no legal sanctity. The certificate Ex.P-34 issued by the Headmaster of the school where the prosecutrix had studied, prepared on

the basis of school records shows her date of birth as 05.05.1995. This certificate has been proved by Leelambar (PW-17) who had issued the same. Thus it is evident that on the date of incident the prosecutrix was below 18 years of age and she was recovered from the custody of the accused/appellant 4-5 days after being taken away by him on the assurance of marriage. Thus the conviction of the accused/appellant under Sections 363 and 366-A IPC appears to be based on the material available on record and being so, it is hereby maintained.

7. As regards sentence, the report received from the Superintendent, Central Jail, Bilaspur dated 21.05.2020 shows that after getting the benefit of remission, the accused/appellant has already been released from the jail on 26.05.2017 therefore, no observation regarding the sentence part is required to be made by this Court.

8. Appeal is thus dismissed.

Sd/-

(Vimla Singh Kapoor)

Judge