

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 312 of 2014**

Puniyaro @ Punam D/o. Sulanram Aged About 35 Years, Caste - Lohar
R/o. Vill. Semarkachhar Sukhbasu Para, P.S. Kansabel, Distt. Jashpur,
Civil and Revenue District – Jashpur, Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through Station House Officer, P.S. Kansabel,
Distt. Jashpur, Chhattisgarh

---- Respondent**CRA No. 325 of 2014**

Jolen Khess S/o Eliyas Khess Aged About 27 Years, Caste – Uraon, R/o
Village Baghchitta Kurdegh, Police Station - Kurdegh, Distt. Simdega
(J.H.) - At Present R/o Om Vihar, Uttamnagar, New Delhi, Civil And Rev.
Distt. New Delhi.

---- Appellant**Versus**

The State of Chhattisgarh, Through Police Station - Kansabel, Distt.
Jashpur, Chhattisgarh

---- Respondent

For Appellant in CRA No.312/2014	: Shri Arun Ku. Shukla, Advocate
For Appellant in CRA No.325/2014	: Shri A.K. Prasad, Advocate
For State/Respondent	: Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor**Order On Board****11.08.2020**

Since the two aforesaid appeals arise out of the same judgment dated 17.02.2014 passed by Additional Sessions Judge, FTC, District – Jashpur, Chhattisgarh in Sessions Trial No.80/2013, they are being disposed of by this common judgment.

2. The accused/appellants here-in by the judgment impugned have been convicted and sentenced in the following manner : -

Accused/Appellant	Conviction	Sentence
Puniyaro @ Punam	Under Section 363 IPC	R.I. for 3 years & fine of Rs.1,000/- in default payment of fine one month R.I. more
	Under Section 370(2) IPC	7 years R.I. & fine of Rs. 1,000/- in default payment of fine one month R.I. more
	Under Section 370(4) IPC	10 years R.I. & fine of Rs.1,000/- in default of payment of fine one month R.I. more
Jolen Khess	Under Section 370(2) IPC	7 years R.I. & fine of Rs. 1,000/- in default payment of fine one month R.I. more
	Under Section 370(4) IPC	10 years R.I. & fine of Rs.1,000/- in default of payment of fine one month R.I. more

3. Facts of the case put forth by the prosecution in brevity are that on 25.06.2013, accused/appellant Puniyaro @ Punam came to the house of Ku. Manpyari (PW-1) where Ku. Anita Bai (PW-5) was already present, and took both of them to Delhi on the assurance of getting them lucrative job. It is relevant to mention here that accused Jolen Khess at the relevant time was already staying in Delhi to eke-out his livelihood. Accused Puniyaro @ Punam first took Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) to Raigarh by bus and thereafter boarded the train for Delhi at her own expenses. The case of the prosecution further discloses that after reaching Delhi, accused Puniyaro @ Punam took the two to the residence of accused Jolen Khess and after dropping them thereat, she got back to her nativity some days thereafter whereas Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) remained in the house of accused Jolen Khess for about

fortnight. Meanwhile, suspecting the some foul-play at the hands of accused Jolen Khess in Delhi, she telephonically informed her father Laxman (PW-6) about their apprehension who after a while happened to reach Delhi and took his daughter Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) out from his clutches and got both of them back to their native village. Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) were recovered from Delhi by Police under the recovery panchnama (Ex-P/3). After getting back to the nativity, a written report (Ex-P/6) was lodged by Laxman (PW-6) – father of the victim Ku. Manpyari (PW-1). After completion of investigation, the challan was filed against both the accused/appellants under Sections 363, 370(1-6), 374 and 34 IPC which led to framing of charge against them under the same sections.

4. Learned Court below vide judgment impugned dated 17.02.2014, convicted and sentenced the accused/appellants as has been described here-in-above. Hence this appeal.

5. Learned counsel for the accused/appellants submits that the entire case of the prosecution is based on conjectures and surmises which could not be made basis of conviction of accused/appellants under Sections 363, 370(2) and 370(4) of the IPC. They submit that none of the prosecution witnesses has stated that either of the accused/appellants had exerted any force or made them go to Delhi. According to the counsel for the appellants, the evidence of Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) discloses that they accompanied accused Puniyaro @ Punam at their own volition. As regards accused Jolen Khess, it is submitted that being already in

Delhi, he was not aware, as to why Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) were taken to his residence by accused Puniyaro @ Punam, but even then he has been roped in a false and fabricated case. According to the counsel for the accused/appellants, even the ingredients of Section 363 are not attracted to the case in hand as none of the witnesses has categorically stated that Ku. Manpyari (PW-1) was at the relevant time a minor and was taken per force by accused Puniyaro @ Punam to Delhi by alluring or exerting any force on her to do so. In sum and substance, their pin pointed submission is that the accused/appellants have not committed any offence and, therefore, they should be acquitted of the charges levelled against them.

6. State counsel on the other hand supports the judgment impugned and submits from the evidence of Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) as also that of their parents being Laxman Ram (PW-6), Mahadev Ram (PW-7) and Rajmet Bai (PW-10) , it remains undisputed that on the assurance of making them available lucrative job in Delhi, the accused/appellant Puniyaro @ Punam took both of them to accused Jolen Khess and therefore, the findings recorded by both the Courts below are just and proper and cannot dislodged in any manner what-so-ever in these appeals.

7. Having minutely seen the evidence of the witnesses and the material collected by the prosecution, it is revealed that on the date of incident accused/appellant Puniyaro @ Punam came to the house of one of the victims Ku. Manpyari (PW-1) and asked to accompanied her to Delhi for getting a well paid job. Record also

reveals that Ku. Anita Bai (PW-5) also accompany Ku. Manpyari (PW-5) and accused Puniyaro @ Punam. Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) though have stated that they left their house at their own volition, yet if the entire factual scenario is taken into consideration it clearly emerges that accused Puniyaro @ Punam removed them from the lawful guardianship by practicing fraud and keeping under deception. Victim Ku. Manpyari (PW-1) has also expressed her apprehension of some foul-play at the hands of accused Jolen Khess and therefore, she had even telephoned to her father Laxman Ram (PW-6) and it is thereafter he somehow reached the house of accused Jolen Khess and recovered them from his clutches under Ex-P/3. Evidence of Ku. Manpyari (PW-1) also shows that, had she not been brought back to the native village, there was every possibility of being disposed of by the accused/appellants. The other victim namely Ku. Anita Bai (PW-5) has also made similar statements while Ku. Manpyari (PW-1) has made an addition to the testimony of Ku. Manpyari (PW-1) to the effect that she was confined in the house of accused Jolen Khess for about 22 days and that when she and Ku. Manpyari (PW-1) did not like to stay in Delhi any longer, telephonic information was given to their parents and in pursuance thereof, they were set free vide recovery panchnama (Ex-P/3). Ku. Anita Bai (PW-5) has disclosed her age to be more than 18 years at the relevant time. Laxman Ram (PW-6) father of victim Ku. Manpyari (PW-1) has told that the age of his daughter Ku. Manpyari (PW-1) to be 13 years. He subsequently has corroborated the testimony of Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5). He has reiterated that both Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5)

were recovered from the house of accused Jolen Khess in Delhi. Mahadev Ram (PW-7) – father of victim Ku. Anita Bai (PW-5) while supporting the case of the prosecution has stated that his daughter Ku. Anita Bai was 19 years of age at the relevant time. Rest of the things stated by this witness are in similitude with that of Ku. Manpyari (PW-1), Ku. Anita Bai (PW-5), Laxman Ram (PW-6) and Mahadev Ram (PW-7). Rajmet Bai (PW-10) – the mother of Ku. Manpyari (PW-1) though has been declared hostile, she has stated that her daughter Ku. Manpyari (PW-1) was 13 years of age at the time of incident. Investigating Officer (PW-11) and the other police officials being Chaitram Sarjaal (PW-2) and Virendra Yadav (PW-4) who recovered Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) from Delhi have also supported the case of the prosecution to the fullest. From the record, it also appears that when accused Puniyaro @ Punam got back from Delhi after dropping Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) therein, she informed Laxman Ram (PW-6) – father of Ku. Manpyari (PW-1) that Manpyari (PW-1) and Ku. Anita Bai (PW-5) were taken to Delhi by her and they both will be brought back to their native place shortly, there from. Testimony of Laxman Ram (PW-6) also reveals that when accused Puniyaro @ Punam did not adhere to her words for accompanying Laxman Ram (PW-6) to Delhi, he took the help of Police, went to Delhi and eventually Ku. Manpyari (PW-1) and Ku. Anita Bai (PW-5) were recovered from the house of accused Jolen Khess under recovery memo Ex-P/3. The record also shows that at the relevant time, victim Ku. Manpyari (PW-1) was 13 years of age and minor as such where as victim Ku. Anita Bai (PW-5) had just crossed 18 years of her age. Since, at the

relevant time Ku. Manpyari (PW-1) was minor, conviction of accused/appellants u/s 370 (4) IPC for taking her to Delhi on the assurance of well paid job by practicing fraud and deception is just and proper and does not call for any interference therewith. Likewise, the fraud practiced and deception played on other victim Ku. Anita Bai (PW-5) aged above 18 years at the relevant time is also evident from the witnesses examined by the prosecution and being so the conviction of the accused/appellants under Section 370(2) for removing her to Delhi by putting her under the same promise of making her available the good job is also just and proper, calling for no interference with the same. Likewise, conviction of accused Puniyaro @ Punam under Section 363 from removing Ku. Manpyari (PW-1) from the lawful guardianship is also based on the testimony of the witnesses particularly Laxman Ram (PW-6), Mahadev Ram (PW-7) and Rajmet Bai (PW-10), is also fully justified.

8. In conclusion the judgment impugned so far as it relates to the conviction of the accused/appellants under all the Sections described above is hereby maintained.

9. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, Surguja C.G. Dated 16.06.2020 shows that after getting the benefit of remission the accused/appellants Puniyaro @ Punam and Jolen Khess have already been released from jail on 24.12.2019 and 03.03.2020, therefore, no observation regarding the sentence part is required to be made by this Court.

10. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge