

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1232 of 2014

Order reserved on 17.06.2020

Judgment pronounced on 02.07.2020

Masoram, S/o Bodda Madia, aged about 25 years, R/o
Salepal, PS Kodena, District Bastar (CG) --- **Appellant**

Versus

State of Chhattisgarh through Station House Officer, Kotwali
Jagdalpur, District Bastar (C.G.) -- **Respondent**

For Appellant : Mr. Anurag Jha, Advocate

For State/Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The accused/appellant herein along with some other persons is said to have come to the village of the prosecutrix about two months prior to the date of incident i.e. on 26.03.2014 for collecting tamarind seeds, and that during their stay in the village the prosecutrix developed an affair with him. On account of their affair, the accused/appellant took the prosecutrix to his village saying that as he was not having children from his wife, he would marry her. On the pretext of marriage, the accused/appellant first took her to village Palanar and then to village Salepal from where she was recovered about 3 months thereafter i.e. on 25.05.2014 vide Ex.P-20. After the prosecutrix went missing, on a report Ex.P-5 being lodged by her father PW-4 namely Jugdhar and offence under Section 363 IPC was registered against him. However, on recovery of the prosecutrix, the offence under Sections 366 and 376 IPC were added in the charge sheet filed on 12.07.2014 after the investigation was over. The charges framed against the accused/appellant were under

Sections 363, 366, 376 (2) (n) IPC and Section 6 of POCSO Act, 2012.

2. Having heard the parties and seen the material on record including the evidence of the prosecutrix, the accused/appellant came to be acquitted of the charge under Sections 376 (2) (n) IPC and Section 6 of the POCSO Act but at the same time he was held guilty under Sections 363 and 366 IPC vide judgment impugned dated 16.10.2014 passed by Additional Sessions Judge (FTC), Bastar at Jagdalpur in Sessions Trial No.34/2014. Hence this appeal.

3. Counsel for the accused/appellant submits that if the over all conduct of the prosecutrix is seen in its proper perspective, it is explicitly clear that she had been a consenting party to the act of the accused/appellant having developed an intimacy with him when he had come to her village for collecting tamarind seeds. He further submits that the evidence of none else but that of the prosecutrix herself shows that she succumbed to the assurance of appellant to accompany him when he assured her of marrying because of having no children from his wife. Nowhere, according to the counsel for the accused/appellant, the prosecutrix appears to have offered any resistance while being taken away by the accused/appellant. Lastly, he submits that looking to the evidence of the prosecutrix that the accused/appellant did not commit any wrong to her, he was acquitted of the charge under Sections 376 (2) (n) IPC and Section 6 of the POCSO Act, and therefore, the same treatment should be extended to him as the conviction under other sections is also based on the same set of facts and evidence.

4. State counsel however supports the judgment impugned and submits that even if the prosecutrix is taken to be a consenting party to the act of the accused/appellant, yet considering the fact that on the date of incident she had not attained majority and thus was not competent to give consent, any such consent is of no help to the accused/appellant. He submits that the birth certificate dated 07.12.1998 issued by the State Government of Madhya Pradesh shows the date of birth of the prosecutrix as 02.12.1998 and thereby on the date of incident she was about 15 years of age and was minor as such. The said birth certificate has been seized under Ex.P-8.

5. Perusal of the over all evidence including the deposition of the prosecutrix (PW-2) goes to show that about two months prior to the date of incident the accused/appellant along with some other persons had come to her village for collecting tamarind seeds and with the passage of time she developed an intimacy with him. She has further stated that assuring her of marriage on account of not having the children from his wife, the accused/appellant took her to his village and kept there for about 3 months but after reaching his house she came to know that the accused/appellant was already having children from his married wife. She however has reiterated that the accused/appellant did not do any wrong with her. She has further stated that while being taken by the accused/appellant she had not raised any hue and cry. Thus, this witness has not made any allegation of any force being exerted on her while being taken by the accused. She however has clearly stated that the accused/appellant had assured her of marriage and took her to his village on that pretext. Father of the prosecutrix namely Jugdhar

(PW-4) has stated that one Urmila (PW-5) had informed his wife (not examined) about the prosecutrix being taken away by the accused/appellant to the other side of the river. He has further stated that though the extensive search was launched to trace out the prosecutrix but all went in vain, and ultimately on getting clues he went to village Salepal from where the prosecutrix was recovered on 25.05.2014 vide Ex.P-20. Dr. S. Mahobia (PW-7) who medically examined the prosecutrix and given her report Ex.P-9 opining that she did not notice any external or internal injury on her person, two fingers easily entered her vagina, her secondary sexual characteristics were fully developed and she was accustomed to sex. Probably on the basis of evidence of this witness (PW-7) as also considering the version of the prosecutrix regarding non commission of any wrong to her, the accused/appellant has been acquitted under Section 376 (2) (n) IPC and Section 6 of the POCSO Act. 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 Sections 363 and 366 IPC for removing her from the lawful guardianship after putting her on a false assurance of marriage, particularly when he was already having children from his married wife. The factum of prosecutrix being minor on the date of incident is evident from her birth certificate which has been seized under Ex.P-8 showing her date of birth as 02.12.1998. This evidence regarding age remained unrebutted all throughout by the defence.

6. 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 Sections 363 and 366 IPC. Conviction of the accused/appellant is thus maintained.

7. As regards sentence, the report received from the Superintendent, Central Jail, Jagdalpur (Bastar) dated 27.05.2020 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 23.10.2017, therefore, no observation regarding the sentence part is required to be made by this Court.

8. 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