

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1554 of 2019

Shankar Kumeti, S/o Farsu Ram Kumeti, Aged About 23 Years, R/o Village- Buddha Khursai, Police Station- Amabeda, District- North Bastar Kanker (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station- Amabeda, District- North Bastar Kanker (C.G.)

---- Respondent

For Appellant : Mr. Shikhar Bakhtiyar, Advocate.

For State/respondent : Mr. Dinesh R.K. Tiwari, Dy. G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

21/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 10.01.2018 passed by Additional Sessions Judge (F.T.C.), North Bastar, Kanker (C.G.) in Session Trial No. 20/2017, wherein the said court convicted the appellant for commission of offence under Sections 363 & 370 of IPC, 1860 and sentenced to undergo R.I. for 4 years and fine of Rs. 500/- & R.I. for 7 years and fine of Rs. 1000/- respectively with further default stipulations. All the sentences to run concurrently.
2. In the present case, name of the victim is Ramdev @ Ramdhar who is son of Somaruram Potai. As per version of the prosecution, in the month of September, 2016, the appellant abducted the victim for labour work and took him to

various places. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The charge under Section 370 of IPC is not established because the ingredients of the said offence is not satisfied by the evidence of the prosecution side.

(ii) The age of the victim is not proved, therefore, the charge under Section 363 of IPC is also not established.

(iii) Due to payment of wages dispute, the false case was instituted against the present appellant, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. First question for consideration before this Court is whether the appellant trafficked the victim and exploited him. Ramdev @ Ramdhar (PW-3) who is the complainant deposed before the trial court that he went to Tamil Nadu of his own will along with the appellant. This witness has not stated any kind of exploitation against him on the part of the appellant. As per version of this witness, when he was informed that the parents

are searching him, he informed the police that he came to Tamil Nadu of his own will. From his entire evidence, there is nothing on record which suggests his trafficking by the appellant.

7. Trafficking of person is defined in Section 370 of IPC and after carefully gone through the provisions, this Court has no reason to form any opinion regarding trafficking of the complainant in the present case. The other witnesses are not the witnesses of the incident, but they only deposed before the trial court that the complainant was taken by the appellant. From the entire evidence, charge under Section 370 of the IPC is not established, therefore, the conviction and sentence for commission of offence under Section 370 of IPC is set aside and the appellant is acquitted of the charge under Section 370 of IPC.
8. Second question for consideration before this Court is whether the appellant kidnapped the complainant from lawful guardianship. As per version of Somaruram (PW-1) who is father of the complainant, age of the complainant is about 16-17. Smt. Ganday Bai (PW-2) who is mother of the complainant deposed before the trial court that age of the complainant is 13 years. Headmaster- Kamal Singh Kumeti (PW-7) deposed on the basis of school register that date of birth of the complainant is 10.02.2004. This witness has deposed before the trial court on the basis of school register which has evidentially value, therefore, looking to the evidence of

parents of the complainant and school register, it is established that the complainant was minor on the date of incident i.e. sometime in the month of September, 2016. From evidence of parents, it is clear that they have not consented the appellant to take their child, therefore, taking by the appellant without consent of their parents, is kidnapping from lawful guardianship. The act of the appellant falls within mischief of Section 363 of IPC, 1860 and the conviction is hereby affirmed.

9. The appellant is reported to be in jail since 28.04.2017 and has completed jail sentence of more than 2 years & 8 months. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount is increased to Rs. 1500/-. If the appellant has paid Rs. 1500/- as fine, he be set at liberty forthwith if not required in any other case.
10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge