

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1850 of 2019**

- Amita Bada @ Sarita, D/o- Bishun Bada, Aged about- 22 years, R/o- Village- Karanji, Jhigadad, P.S.- Rajpur, District- Balrampur (C.G.) **---- Appellant**

Versus

- State of Chhattisgarh, through- Station House Officer, Police Station- Gandhinagar, District- Surguja (C.G.) **---- Respondent**

For Appellant : Shri Manoj Kumar Jaiswal, Advocate.

For State/Respondent : Smt. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****08/01/2020**

1. Heard on I.A. No. 02/2019, which is an application for condonation of delay in filing the instant criminal appeal.
2. For the reasons mentioned in the application, the same is allowed and the delay of 1364 days in filing the appeal is condoned.
3. This appeal is preferred against the judgment dated 29th December, 2015 passed by Additional Sessions Judge (F.T.C.), Surguja (Ambikapur) (C.G.) in Sessions Trial No. 73/2014 wherein the said Court convicted the appellant for commission of offence under Sections 370(3) and 366 of IPC, 1860 and sentenced him to undergo R.I. for ten years and fine of Rs. 5000/- and R.I. for seven years and fine of Rs. 5000/- respectively with default stipulations.
4. In the present case, prosecutrix is PW-7. As per version of the prosecution the present appellant kidnapped/abducted the prosecutrix and carried out her for using as prostitute and other

co-accused committed sexual intercourse with her. On the basis of complaint F.I.R. was registered. After investigation appellant was charge-sheeted and convicted as mentioned above.

5. Learned counsel for the appellant submits that offence under Section 370(3) and 366 of IPC is not made out against the present appellant because there is no reliable evidence on record. The prosecution has not recovered prosecutrix from the present appellant and age of the prosecutrix is not proved to be below 18 years. The trial Court has not evaluated the oral and medical evidence properly, therefore, finding of the trial Court is liable to be set aside.
6. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be interfered while invoking jurisdiction of the appeal.
7. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
8. The question for consideration of this Court is whether the transport of the victim by inducement including giving of payment or benefit in order to achieve the consent and whether she has been exploited by the present appellant. From the evidence of the prosecutrix (PW-7) it is established that the appellant took the prosecutrix to Bilaspur from Ambikapur and engaged her in household work and amount of remuneration was received by the present appellant and no amount was paid to the victim. Again the present appellant took the victim to Surat from Bilaspur by

train and she was shifted to village- Kim from Surat. As per version of the prosecutrix the appellant involved her for submission of body and when she objected the appellant assaulted her. Version of this witness is unrebutted during cross-examination. Her version is supported by version of Manmati (PW-1) and Gandhi Korwa (PW-2) who are parents of the victim and they stated before the trial Court that victim was missing for the last six month from lodging the report. All these witnesses have been subjected to searching cross-examination but nothing has been elicited in favour of the defence. From the evidence, it is clearly established that the appellant is involved in trafficking of the victim. The act of the appellant falls within mischief of Sections 370(2) and 366 of Indian Penal Code, 1860. Though the trial Court convicted the appellant for commission of offence under Section 370(3) of IPC, but said provision applies when offence involves the trafficking of more than one person. In the present case, it is not established that the appellant is involved in trafficking of more than one person, therefore act of the appellant falls within mischief under Sections 370(2) and 366 of IPC, 1860.

9. Accordingly, the appellant is convicted for offence under Section 370(2) and 366 of IPC, 1860. His conviction of offence under Section 370(3) of IPC is hereby set aside. The appellant is sentenced for offence under Section 370(2) of IPC and awarded sentence of 7 years and fine of Rs. 5000/- and for offence under Section 366 of IPC is upheld. In all, the appellant shall suffer jail term for 7 years. The fine amount awarded by the trial Court shall

remain intact. The appellant shall be released from jail after completion of seven years of jail sentence if not required in any other case.

10. With the aforesaid modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Vasant