

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1171 of 2013**

- Sonu Saimon Arora, S/o Shri K. Damnik Arora, age about 21 years, R/o Village Mainpur – Khurd, P.S.- Mainpur, District – (Revenue) – Gariyaband, & District (Civil) – Raipur, (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh, Through District Magistrate, Gariyaband, District : Gariyaband, (C.G.).

---- Respondent

For Appellant	:	Shri Yogesh Pandey and Ms. Richa Pandey, Advocates.
For Respondent/State	:	Shri Sushil Sahu, P.L.

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****18/02/2021**

1. This appeal has been preferred against the judgment dated 31/10/2013 passed in Sessions Trial No.7/2013 by the Additional Sessions Judge, Gariyaband, (C.G.), whereby the appellant has been convicted under Section 363 of the I.P.C. and sentenced to undergo R.I. for 8 months and 20 days and fine of Rs.2,000/-, with default stipulations.
2. In the present case, at the relevant time age of the prosecutrix was below 18 years. As per the entries made in Kotwar register her date of birth is 8/1/1997. One uncle of the prosecutrix namely Gevarchand

Kurre (PW-15) on 25/10/2012 lodged a missing report of the prosecutrix stating that his niece (prosecutrix) was missing from his house since 20/10/2012. During course of enquiry, prosecutrix was recovered on 7/12/2012 from one hostel namely Ashray Girls Hostel, Raipur. Thereafter, statement of the witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed charges under Section 363, 366, 417, 376(1) of the I.P.C. To prove the guilt of the accused/appellant, prosecution has examined as many as 19 prosecution witnesses. No defence witness has been examined. Statement of the appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded innocence and false implication.

3. After trial, the trial Court acquitted the appellant for the charges punishable under Sections 366, 417, & 376(1) of the I.P.C. and convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for appellant submits that appellant is innocent and is falsely implicated in the case. They further submitted that trial Court has wrongly convicted the appellant without there being any clinching evidence available on record against him. From the admissions made by the prosecutrix in her statement, it is well-established that she herself had left her house with her own will and on being asked by her, appellant took her to hostel. It is further submitted that there is nothing on record on the basis of which it can be said that appellant had enticed the prosecutrix in any manner and took her

away. Thus, material ingredients of the offence are totally missing in this case. Therefore, conviction of the appellant under Section 363 of the I.P.C. is not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record, statement of prosecutrix minutely.
7. In her Court statement Prosecutrix (PW-7) has deposed that in the year 2012, she was studying in class 10 and was staying at the house of her uncle. On the date of incident, prosecutrix went to the house of her friend Pooja Bambode and from there, she went to the house of appellant and stayed there. Since, she did not want to return to her house, next day, being asked by her, appellant took her on his motorcycle and they went to Nagri and thereafter, to Raipur and there appellant left her in a hostel. According to this witness, appellant did the said act, being asked by the prosecutrix only. This witness has not further supported the case of the prosecution and turned hostile.
8. On minute examination of statement of the prosecutrix, it appears that, though age of the prosecutrix on the date of incident was below 18 years, she left her house on her own will. On being asked by the prosecutrix only, appellant took her in his motorcycle and left her in a hostel at Raipur. There is no such evidence available on record which shows that appellant had enticed the prosecutrix and took her away.

Thus, conviction of the appellant made by the trial Court is not sustainable.

9. Consequently, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him under Sections 363 of the IPC.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge