

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1285 of 2016**

1. Roshan @ Seepu Rathore S/o Jagdish Rathore, Aged About 23 Years, R/o Village Saragaon, Police Station Saragaon, District Janjgir-Champa (C.G.)

---- Appellant
(In Jail)

Versus

1. State Of Chhattisgarh, Through Police Station Saragaon, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant : Mr. B.L. Dembra, Advocate.
For Respondent/State : Mr. Priyanhsu Gupta and Ms. Deepti Shukla,
Panel Lawyer for the State.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

22/11/2021

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28/05/2016 passed by Additional Session Judge, (Fast Track Court), Janjgir, District Janjgir-Champa (C.G.) in Session Trial No. 45/2014; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 363 of Indian Penal Code (in short "IPC")	R.I. for 3 years & fine of Rs. 5,000/- in default of fine additional R.I. for 3 months.

- 2) Case of the prosecution, in brief, is that on 13/09/2013 the prosecutrix had gone to attend her tuition class where the appellant came on motorcycle bearing registration No. CG11 BB 9933 and took her in the name of roaming around. However, the appellant first took her to Raigarh and from there he took her to Raipur. The appellant persuaded her to marry him and on her

refusal he left her at railway station Raipur. The prosecutrix informed about the incident to her elder sister Jyoti Rathore living in Bilaspur, who brought her back to Bilaspur. Father of the prosecutrix lodged a report against the appellant on 18/09/2013 under Section 363 of IPC (Ex. P-1). During investigation spot map Ex. P-4 was prepared by the Police and another spot map Ex. P-7 was prepared by the Patwari. Dakhilkharij Register of the prosecutrix of Primary School was seized vide Ex. P-2C where her date of birth is mentioned as 26/01/1997. A certificate given by the Principal of Higher Secondary School Saragaon certifying the date of birth of the prosecutrix as 26/01/1997 was seized vide Ex. P-3. From the possession of the appellant one mobile without SIM and the motorcycle Bajaj Discover bearing registration No. CG11 BB 9933 used in commission of offence were seized vide Ex. P-5. The appellant was arrested on 24/09/2013 vide arrest memo Ex. P-7. Call details were also obtained of Mobile Nos. 8305972526 and 8103766930 vide Ex. P-9 and Ex. P-10. Statements of the witnesses were recorded and after completing investigation charge-sheet was filed against the accused/appellant for the offence punishable under Sections 363 & 366 of IPC.

- 3) The Trial Court framed charges against the accused/appellant under Sections 363 & 366 of IPC which were denied by him and he prayed for trial.
- 4) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Prosecutrix, PW-02 Badri Prasad (Father of the prosecutrix), PW-03 Ramdhan Kaushik (Principal), PW-04 J.R. Sidar (Sub Inspector), PW-05 Sanat Kumar, PW-06 Jyoti Rathore (elder sister of the prosecutrix), PW-07 Patiram Shriwas (Patwari), PW-08 Rajendra Shrivastava (Steno to S.P.), PW-09 K.P. Gupta (Sub Inspector) and PW-10 Narad Prasad (grand-father of the prosecutrix). The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his

defence he stated that as he was having affair with the prosecutrix, the witnesses are stating against him. No any defence witness was examined on his behalf.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that the learned Trial court has not properly appreciated the evidence available on record. In this case as per evidence of the prosecutrix she willingly went alongwith with accused and as such no offence was made out against the present appellant. The age of the prosecutrix is not proved beyond all reasonable doubt that she was below 18 years of age on the date of incident. Therefore, the learned Trial Court has committed an illegality in holding the appellant guilty of offence under Section 363 of IPC.
- 7) On the other hand, learned counsel for the respondent/State supporting the impugned judgment submits that Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) First this Court proceeds to consider the age of the prosecutrix. As per Dakhil-Kharij Register (Ex. P-2C), the date of birth of the prosecutrix is mentioned as 26/01/1997. The said document has been proved by PW-03 Ramdhan Kaushik, Principal of the Higher Secondary School, Saragaon. However, he admits that he is not aware as to who admitted the prosecutrix in the School and on what basis the said entry regarding her date of birth was entered in the register as at that time he was not posted in the said School. As per PW-02 Badri Prasad, Father of the prosecutrix the age of the prosecutrix was 17 years at the time of recording of his deposition i.e. 29/10/2014. The above evidence

regarding age of the prosecutrix remains uncontroverted in the cross-examination. As such on the date of incident i.e. 03/09/2013 the prosecutrix would be less than 17 years. PW-06 Jyoti Rathore, elder sister of the prosecutrix, also states that date of birth of the prosecutrix is 26/01/1997 and in cross-examination she admitted that the said date of birth is being disclosed on the basis of her mark sheet. Thus, from the documentary evidence in the form of Dakhil-Kharij Register Ex. P-2C and the oral unrebutted evidence of PW-02 Badri Prasad which is corroborated by the evidence of PW-06 Jyoti Rathore, it stands proved beyond all reasonable doubt that on the date of incident i.e. 13/09/2013 the prosecutrix was below 17 years of age.

- 10) PW-01 prosecutrix has deposed in Paras 2 and 4 of her evidence that on 13/09/2013 while she was going to attend her tuition class, the appellant with one Ramesh Patel came their by motorcycle, she was forcibly made to sit on the motorcycle, she was initially taken to Sakti on the threat of life and from there she was taken to Raigarh and thereafter to Raipur by Train. While she was being dragged by the accused persons, she raised hue and cry, upon which the accused persons fled away having left her in Raipur. She remains firm in her cross examination and there is no major contradictions or omissions in her statement.
- 11) PW-02 Badri Prasad, father of the prosecutrix states that when the prosecutrix did not return home after her tuition class, he inquired about her in the vicinity and thereafter lodged a report Ex. P-1. Next day when the prosecutrix returned home, she informed that it is the appellant who had abducted her.
- 12) PW-06 Jyoti Rathore, elder sister of the prosecutrix states that she was informed by the prosecutrix over telephone on 14/09/2013 that the appellant has fraudulently brought her to Raipur and having left her in Raipur, fled away and that she was coming Bilaspur by Train. She states that the prosecutrix informed her that it is the appellant who took her to Raigarh on the pretext of marriage and from there he took her to Raipur and

left her there. This witness also remained firm in the cross-examination and there is no major contradictions or omissions in her statement which could make her evidence untrustworthy or doubtful.

- 13) PW-10 Narad Prasad, grand-father of the prosecutrix also states that when the prosecutrix returned home she informed that the appellant had taken her to Raipur.
- 14) PW-04 J.R. Sidar, Sub Inspector prepared spot map Ex. P-4, recorded statements of the prosecutrix and Jyoti Rathore, seized mobile without SIM card of the appellant vide Ex. P-5, prepared arrest memo of the appellant Ex. P-7, gave intimation regarding arrest of the appellant to his father vide Ex. P-8 and wrote a letter to the Head Master Gayatri Shishu Mandir for providing copy of Dakhil-Kharij Register regarding date of birth of the prosecutrix vide Ex. P-6. This witness has duly proved the prosecution case.
- 15) PW-09 K.P. Gupta, Investigator Officer has duly supported the prosecution case.
- 16) Thus considering the unrebutted statement of the prosecutrix, which finds due corroboration from the evidence of her father PW-02 Badri Prasad, her sister PW-06 Jyoti Rathore and grand-father PW-10 Narad Prasad, as well as the promptly lodged FIR, it stands proved beyond all reasonable doubt that it is the appellant, who kidnapped the prosecutrix from her lawful guardianship. Being so, this court finds no illegality or perversity in the impugned judgment of the Trial Court convicting the appellant under Section 363 of IPC and sentencing him to undergo R.I. for 3 years with fine of Rs. 5,000/- plus default stipulation.
- 17) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly **dismissed**. As per report submitted by Jail Superintendent, Central Jail Bilaspur, the appellant has completed the substantive jail sentence on 14/03/2019 and due to non-payment of fine amount, he is to

suffer the default sentence. It is also mentioned in the said report that he is undergoing life imprisonment in connection with another ST No. 46/2014 for the offence under Section 302/34 of IPC.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant