

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 387 of 2013**

Vinod Kumar Dahariya S/o Dudhnath Dahariya, aged about 27 years R/o Kutrabor, Police Station Jaijaipur, District Janjgir-Champa (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through Police Station Jaijaipur, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant	:	Mr. Samir Singh, Advocate
For Respondent	:	Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****05/01/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 12/04/2013 passed in Sessions Trial No. 55/2012 by the Second Additional Sessions Judge, Sakti, District Janjgir-Champa (C.G.), whereby the Appellant has been convicted under Sections 363, 366 (A) and 376 (1) of the IPC and sentenced to undergo RI for 5 years with fine of Rs. 10,000/-, RI for 6 years with fine of Rs. 20,000/- and RI for 10 years with fine of Rs. 1,00,000/-, respectively, with default stipulations.
2. In this case, the age of the Prosecutrix (PW1) was about 17 years 3 months at the time of alleged incident. According to the case of the prosecution, on 03/12/2011 at about 8:20 am, when the Prosecutrix was going to her school, on the way the appellant came there in a car along with other persons and forcibly abducted her. At that time, the Prosecutrix tried to call her mother through phone and the phone was

disconnected by the appellant. After receiving the call, mother of the Prosecutrix inquired about the Prosecutrix from school and other persons. Thereafter, she went to lodge missing report vide Ex.P-15. On 16/12/2011, the Prosecutrix was recovered from the possession of the appellant from Jammu & Kashmir. Her statement under Section 161 of the Cr.P.C was recorded and on the basis of facts disclosed by the Prosecutrix, FIR has been lodged vide Ex.P-17. The Prosecutrix was medically examined by Smt. Dr. Seemanandni Chaudhry (PW11). Her report is Ex.P-16. Statements of other witnesses were also recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 12 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence. He further submits that the alleged incident occurred in the year 2011 and at that time, the age of the prosecutrix was about 17 years, meaning thereby she was below 18 years of age. He further submits that prior to amendment of 2013 in IPC, the consenting age of the Prosecutrix was mentioned as 16 years. Since at the time of alleged incident, the Prosecutrix was more than 16 years and from the statement of the Prosecutrix, it is well established that she was the consenting

party, and on her own will she had left her house and stayed with the appellant at various places, therefore, the conviction of the appellant under Section 366 (A) and 376 (1) of the IPC is not sustainable. With regard to offence under Section 363 of the IPC, he submits that from the statement of the prosecutrix, it appears that she herself had left her house therefore, offence under Section 363 of the IPC is also not sustainable.

5. Per contra, learned Counsel appearing for the State supported 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 as well as statement of the Prosecutrix minutely.
7. There is no dispute on the point that at the relevant time, the age of the Prosecutrix was about 17 years and she was below 18 years of age.
8. In her Court statement, the Prosecutrix (PW1) has deposed that on the date of incident, she was going to her school. On the way, the appellant came in a car along with other persons and abducted her. She further deposed that the appellant had taken her to BALCO, where she tried to call her mother, but the appellant disconnected her phone and switched off the same. At BALCO, the appellant committed sexual intercourse with her and pressurized her to marry with him. She further deposed that they stayed there for about 5 days. Thereafter, the appellant took her to Bilaspur, and from Bilaspur to Jammu & Kashmir. They stayed in Jammu & Kashmir for about 5 days, where also the appellant committed sexual

intercourse with her. She further deposed that after five days, the police officials came there and recovered her. In her cross-examination, the Prosecutrix has admitted that when she was taken to BALCO through car, she did not cry or called any people there. She further admitted that while traveling from BALCO to Bilaspur, she did not disclose this fact to anyone that she was being forcibly taken. She further admitted that at Bilaspur Railway station, in train and also in Jammu & Kashmir, she did not complaint that the appellant has forcibly brought her or abducted her.

9. On minute examination of the above statement of the Prosecutrix, it is apparent that the Prosecutrix stayed at BALCO for about 5 days, thereafter, she moved from BALCO to Bilaspur and from Bilaspur to Jammu & Kashmir where also she stayed about 5 days. During this period, she was having ample opportunities to disclose the fact or make any complaint which she did not do. Even in train also when she was traveling to Jammu & Kashmir she did not make any complaint to anyone. Though she denied that she was having love relation with the appellant, from the statement made by her it appears that she had gone with the appellant on her own will and on her consent the appellant had developed physical relationship with her. Apart from this, the alleged incident occurred in the year 2011. Section 375 of the IPC was amended on 03/02/2013. Prior to that amendment, the age for consent of the Prosecutrix was mentioned 16 years which later on was amended to 18 years. In this case, at the relevant time, the age of the Prosecutrix was about 17 years, meaning thereby she was more than 16 years of age and it has already been discussed that she was the consenting party, and the alleged act was done with her consent, therefore, the conviction of the

appellant under Section 376 (1) and 366 (A) of the IPC is not sustainable.

10. With regard to offence under Section 363 of the IPC, the maximum punishment is 7 years as per IPC. The appellant has already undergone about 8 years. As per the report sent by Jail Superintendent, Bilaspur, the appellant has already released on 01/04/2020 after completing the jail sentence awarded to him. Therefore, he is not required to further go into the jail.
11. In the result, the Appeal is partly allowed. The Appellant is acquitted from the charge framed under Sections 366 (A) and 376 (1) of the IPC, however, his conviction Section 363 of the IPC is affirmed.
12. 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