

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 202 of 2016**

Jaipal Yadav, S/o Shri Munuram Yadav, Aged about 23 Years, Occupation Labour, R/o Village Sukwas, P.S. Lailunga, Civil and Revenue District Raigarh, Chhattisgarh.

**---- Appellant**

**Versus**

State of Chhattisgarh, Through- The Station House Officer, Police Station Lailunga, District Raigarh, Chhattisgarh.

**---- Respondent**

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| For Appellant        | : | Mr. Anish Tiwari, Advocate.  |
| For Respondent/State | : | Mr. H.S. Ahluwalia, Dy. A.G. |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**Judgment on Board**

**30/06/2021**

1. By the impugned judgment dated 28.12.2015 passed in Sessions Trial No. 73/2013 by the learned First Additional Sessions Judge, Raigarh (C.G.), the Appellant has been convicted for the offence punishable under Sections 364 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 2,000/- with default stipulation.
2. According to the case of prosecution, on 31.12.2012 mother of the victim girl Rukmani Yadav (PW-2) lodged a report in concerned Police Station alleging therein that her minor daughters namely Bharti Yadav and Gayatri Yadav were sleeping on cot in courtyard. When she

heard cries of her daughter, she rushed to courtyard and saw that her daughter Bharti Yadav was not present on cot and the Appellant was trying to fleeing from the courtyard by holding her minor daughter Bharti Yadav. On raising alarm by Rukmani Yadav, her brother-in-law, neighbors as well as police persons came there and caught the Appellant near a tree. On the basis of said report made by complainant Rukmani Yadav, offence has been registered against the Appellant. Later on statements of the complainant and other witnesses were recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet has been filed. Trial Court has framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 16 witnesses. No defense witness has been examined by the Appellant. 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.

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 for the Appellant submits that without there being any clinching and reliable evidence available on record, the Trial Court has convicted the Appellant. Referring the statement of Rukmani Yadav (PW-2), Vicky Yadav (PW-5) and Kumari Urmila (PW-6), it has been argued by the Counsel that if the entire case of prosecution taken as it is even then the matter relates to attempt of kidnapping, therefore, conviction of the Appellant under Section 364 of the IPC is not sustainable.
5. Learned counsel for the State opposed the appeal and supported the

impugned judgment and submits that the conviction of the Appellant is just and proper and requires no interference.

6. I have heard Learned Counsel appearing for the parties and perused the record to assess the correctness of the impugned judgment of conviction. I have also gone through the statements of the witnesses.
7. There is no dispute on the point that at the time of incident, Bharti/victim was aged about 3 years. Rukmani Yadav (PW-2) mother of the victim deposed that on 31.12.2012 at about 05:17 PM, when her daughters namely Gayatri and Bharti were sleeping on cot in courtyard, she heard cries of her daughter, she rushed to the courtyard and saw her minor daughter Bharti was not present on cot and her another daughter Gayatri was crying. When she screamed, Vicky Yadav (PW-5), Kumari Urmila (PW-6) and other persons rushed outside for finding her minor daughter, the Appellant Jaipal Yadav was hiding behind Lantana tree (Putus tree) by holding the victim. Vicky Yadav (PW-5) and Kumari Urmila (PW-6) also supported the statement of Rukmani Yadav (PW-2) and stated that after hearing the screams of Rukmani Yadav, they reached the place where the Appellant was trying to escape by holding the victim, they caught the Appellant and released the victim from his possession. The statements of all above witnesses were not duly rebutted during their cross-examination. Tokeshwar Yadav (PW-1) also supported the statement of Rukmani Yadav (PW-2). From the unrebutted statements of the above witnesses, it is well established that the Appellant had successfully eloped the victim from the complainant's house and has been apprehended near the Lantana Tree (Putus Tree). Since, the Appellant

had successfully eloped the victim from the complainant's house and has been apprehended near the Lantana Tree (Putus Tree), therefore, I do not found any substance regarding the submission putforth by learned Counsel for the Appellant that there was an attempt of kidnapping.

8. Looking to the entire case of prosecution, finding of the Trial Court is accordance with the evidence available on record. Thus, the Trial Court has rightly convicted the Appellant.
9. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

**Sd/-**  
**(Arvind Singh Chandel)**  
**Judge**