

HIGH COURT OF CHHATTISGARH AT BILASPURACQA No. 233 of 2021

1. X D/o Y Aged About 27 Years R/o Vill. Dhanpunji Distt. Bastar Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through Aarkshi Kendra Bodhghat, Distt.- Bastar (Chattisgarh)
2. Murli Harijan S/o Piladas Harijan Aged About 23 Years R/o Vill. Chandali, P.S. Kotpad, Distt. Koraput Orrisa
3. Parth Sindhi @ Parth Sarthi Singh S/o Sadanand Singh Aged About 24 Years R/o Vill. Chandali, P.S. Kotpad, Distt. Koraput Orrisa
4. Sanjay Bisai S/o Tularam Bidsai Aged About 26 Years R/o Vill. Chandali, P.S. Kotpad, Distt. Koraput Orrisa

---Respondents

For Appellant	:	Mr. Vikas Kumar Pandey, Advocate.
For State	:	Mr. Arjit Tiwari, P.L.

Hon'ble Shri Justice P.Sam Koshy
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per P. Sam Koshy, Judge

18/11/2021

1. The present is an appeal u/s 372 of CRPC preferred by the Victim/Appellant.
2. Vide the impugned order dated 15.12.2020 passed by the Additional Session Judge,(F.T.C.) Jagdalpur, Distt. Bastar in S.T. No. 07/2019, the respondents 2 to 4-accused have been acquitted from the charges u/s 366 r/w 109 & 376 of IPC.

3. The relevant facts necessary for deciding of this present acquittal appeal are that the Appellant/victim is said to have been abducted by the respondents No. 2 to 4-accused on 11.06.2018 at around 5pm, while appellant was going to her grand mother's place. It was alleged by the appellant that enroute to her grand mother's home, she was intercepted by the respondent No. 4 who on the pretext of dropping her at the grand mother's home on the motor cycle, gave a lift to the appellant. However, Instead of taking her to grand mother's place, he took her to a different location where enroute the respondent No. 2 & 3 were standing with a four wheeler (Bolero). The respondent No. 4 is said to have stopped the motorcycle near the four wheeler and meanwhile, all the accused persons said to have caught the victim/appellant and have forcefully made her to sit in the four wheeler. Thereafter, she was taken to different places and finally she was taken to a town in Odisha namely Jeypore. Thereafter, late in the evening, the appellant/victim and the respondent No. 2 is said to have boarded a bus after offering some drink to the appellant by which she has lost her consciousness. The next Morning when she is said to have woken, she found herself in a room which was a hotel at the city of Bhubaneswar in Odisha. It is further contention that at the said hotel, the respondent No. 2 is said to have ravished her and thereafter, the respondent No. 2 took her to different locations for another period of two months and during all these periods, the respondent No. 2 is said to have physically exploited the appellant/victim. Finally, she could escape from clutches of the respondent No. 2 and she came back to her village and lodged a FIR on 23.08.2018. Thereafter, the matter put to Trial before the Additional Session Judge, (F.T.C.) Bastar Jagdalpur and where vide

the impugned order taking into consideration all the evidences which was adduced by the prosecution, the Court below acquitted the respondents No. 2 to 4 holding that the prosecution has failed to make out a case against the respondents No. 2 to 4 for the offence both u/s 366 and also u/s 376 of the IPC. It is this order of acquittal which is under challenge in the present acquittal appeal by the appellant.

4. The Contention of the counsel for the appellant is that the Court below has failed to take note of the evidences which has come on records, particularly, in respect of the statement of the prosecutrix as also the contents of the FIR and the written report which was reported after the appellant/victim had returned home. Learned counsel for the appellant further submits that Court below ought to have appreciated the statement of the prosecutrix to the extent of allegations of coercion and the threat of consequences given to the victim by the respondent-accused on account of which she could not either resist the respondents or lodge a complaint fearing harm both to her life and also physically.
5. The State Counsel opposing the acquittal appeal submits that the plain reading of the judgment of acquittal given by the Court below would clearly reflect that there has been a threadbare examination of the witnesses and the contents of the statement of each of the witnesses, particularly that of the prosecutrix and her mother. It is the further contention of the State Counsel that from the reasonings given by the Court below, it cannot be said that the finding arrived at is either contrary to the evidence or is in any manner perverse and thus opposed the appeal preferred by the appellant.

6. Having heard the contention put forth on either side and on perusal of records, as would be evident from the statement of the prosecutrix itself, which has been further supported by the statement of the mother of the prosecutrix PW6 and PW7, it is evidently clear that the appellant was in the company of the respondent No. 2 from 11.06.2018 till she returned home i.e. on 28.08.2018. It is also evident from the statement of the prosecutrix herself that during all these period, she had been traveling with the respondent No. 2 to various places and various cities and towns. That for traveling to different locations, they had also used the public means of transport. Further, during all these period, they have been staying at hotels at different locations. All these facts go to show that the appellant during all these period was in public and had ample opportunity for raising an alarm, if she was being forcefully taken by the respondent No. 2 and she also had ample opportunity of escaping from the clutches of the respondent No. 2.
7. Further from the evidences, it is also reflected that the appellant/victim has also appeared before the Executive Magistrate along with a lady Advocate and even at that point time, no such allegations or averments were made by the appellant/victim. The appearance of the appellant before the Executive Magistrate was with an application for Marriage along with photographs etc. She had also appeared before the Marriage Officer, even at that point of time there was no indication whatsoever on behalf of the appellant/victim resisting the said marriage or the alleged act on the part of the respondents of her being forcefully taken to different places without her willingness and consent, more particularly of having being raped by the accused persons. The records further show that in between

the period of two months, they had traveled from Jagdalpur to Jayepore and from there to Bhuvneshwar etc., and have been staying at various hotels and guest houses. If, the appellant/victim had been really taken by force by the respondent NO. 2 there were ample opportunities for the appellant to raise an alarm seeking help from the Public at all the places she was said to have been forcefully held up.

8. In the absences of any such act on the part of the appellant/victim, the inference drawn by the Court below for reaching to the conclusion cannot be said to be a perverse finding or a finding contrary to the evidences. That given the said evidence on the part of the prosecutrix, the finding given by the Court below is the safest conclusion that could have been arrived at. Taking into consideration the provisions under which they have been charged i.e. for the offence u/s 366 & 376, the necessary ingredients required for making out offences under these two provisions have not been established by the prosecution by any cogent evidence nor does it reflect from the statement made by the prosecutrix herself.
9. For all these reasons we are inclined to reach to the conclusion that the present acquittal appeal does not have any merits and the same deserves to be and is accordingly rejected.

Sd/-
(P.Sam Koshy)
Judge

Sd/-
(Party Prateem Sahu)
Judge