
(2020) 11 CHH CK 0004

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 1091 Of 2007

Narhari Sahu

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Nov. 26, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 363, 366, 376, 506B
- Code Of Criminal Procedure, 1973 - Section 161

Hon'ble Judges: Vimla Singh Kapoor, J

Bench: Single Bench

Advocate: D.N. Prajapati, Sameer Sharma

Final Decision: Allowed

Judgement

Vimla Singh Kapoor, J

1. FIR (Ex-P-4) lodged by Firanta (PW-2) " the grandfather of the prosecutrix discloses that on 09.09.2005, the accused-appellant removed the

prosecutrix from her lawful guardianship took her to various places and kept her with him for number of days. FIR also discloses the date of birth of

prosecutrix to be 18.04.1989 and, as such, she has been branded as minor on the date of incident. On the basis of FIR offences under Sections 363

and 366 IPC were registered against the accused-appellant. After the prosecutrix got back, she was sent for medical examination, her statement

under Section 161 Cr.P.C. also recorded and after completion of investigation charge-sheet was filed against the accused-appellant under Sections

363, 366, 506-B and 376 IPC, and so also the charge was framed under the same sections.

2. Learned Court below vide judgment impugned dated 01.12.2007 passed in Sessions Trial No.72/2006 acquitted the accused-appellant of the charges

under Sections 506-B and 376 IPC but held him guilty under Sections 363 and 366 IPC by imposing the sentence of R.I. for three years on each

count. Hence this appeal.

3. Counsel for the accused-appellant submits that the prosecution has utterly failed to prove that the prosecutrix was below 18 years of age on the

date of incident, but yet the accused-appellant has been convicted under Section 363 of IPC. He submits that learned Court below has ignored the fact

that the prosecutrix herself has declared hostile and have not supported the case of the prosecution, but yet the accused-appellant has held guilty under

Sections 363 and 366 IPC. According to the counsel for the accused-appellant, when the accused-appellant has been acquitted of other charges, he

should have been given the same treatment for other charges also, because no other evidence has been collected by the prosecution, on the basis of

which, the Court below might have been persuaded to held him guilty under Sections 363 and 366 IPC. He submits that the grandfather of the

prosecutrix Firanta (PW-2) and father " Chandu (PW-1) though have tried to support the case of the prosecution to the effect that the prosecutrix

was minor on the date of incident, they have not proved the origin of the date of birth recorded in the school certificates to be 18.04.1989, and,

therefore, their statement to this effect becomes redundant. As record says that the prosecutrix herself has stated that she was above 18 years of age

on the date of incident and so also the discloser was made by her before the Court at the time of her examination, where she has told her age to be 20

years.

4. On the other hand, State counsel supported the judgment impugned and submits that as the accused-appellant removed the minor prosecutrix from

lawful guardianship and subjected her to sexual exploitation for days together, the findings recorded by the Court below are fully justified and cannot

be deprived by this Court.

5. Heard learned counsel for the parties and perused the evidence on record including the judgment impugned.

6. First of all it appears to be just and proper to this Court to decide as to whether the prosecutrix was minor on the date of incident or not. Though her

father " Chandu (PW-1) and grandfather" Firanta (PW-2) have stated that on the date of incident the prosecutrix was below 16 years of age, yet

though they have not been in a position to explain as to on what basis such assessment has been given by them. What creates doubt in mind of this

Court is that the date of birth as has been disclosed by PW-2 at the time of lodgment of FIR (Ex-P/4) comes to 18.04.1989, but while stating before

the Court he has taken a complete somersault and has stated that the date of birth of the prosecutrix was 04.06.1989. however, he has not been in a

position as to on what basis he has given these two different date of birth. On the contrary, he has stated that he had not accompanied the prosecutrix

nor getting her admitted in the school. If the evidence of the prosecutrix is taken into consideration, she has categorically stated that she was above 18

years of age at the time of incident. Not only this, she has also given her age before the Court below at the time of deposition to be 20 years. Onkar

Sahu (PW-5) " the head master of the school, who has been examined by the Court below to prove the date of birth of the prosecutrix on the basis

of school register, has given a yet newer date of birth to be 03.03.1989, but the name of the prosecutrix has been displayed as Kumari Lata, whereas

in the FIR it is Somlata. Even this witness has expressed his inability to state as to on what basis the date of birth of the prosecutrix has been

mentioned in the school register as 03.03.1989. Thus, there is no concrete evidence to show that at the time of incident the prosecutrix was below 18

years of age. On the contrary, the evidence of prosecutrix right from the beginning makes a clear disclosure that on the date of incident she was

above 18 years of age, thus the finding recorded by the Court below that the accused-appellant removed the minor prosecutrix from her lawful

guardianship is without any substance and the same is hereby set aside.

7. As regards conviction of the accused-appellant under Section 366 IPC, the prosecutrix right from the stage of her 161 Cr.P.C. statement, she has

consistently stated that as the accused-appellant and she herself of the like of each other and she had moved her house without informing about the

same to any one in the family, she has clarified that after she accompanied the accused-appellant he did not do anything with her, on this point she has

declared hostile. However, in the cross examination also she has consistently stated that she had clearly informed the police that she had accompanied

the accused-appellant out of her own sweet will as he had proposed her for marriage. She has stated that she stayed with him at various places such

as Raipur, Nagpur etc. and during this period they both work as labourers in brick-kiln. She has denied that the accused-appellant had allured or

enticed her in any manner, what so ever while taking her with him. She has again reiterated in her cross-examination that the accused-appellant had

not taken her away against her wishes and that after putting her in threat he has subjected her to forcible sexual intercourse on many occasions. She

has further denied that at the time when she accompanied with the accused-appellant, her age was 16 years. She has stated that her father know well

in advance that there was love affair between the accused-appellant and her daughter, and as a proposal of marriage was came from her community,

a false report was lodged against the accused-appellant. She has further stated that during their stay for number of days at various places they got

married and out of their wedlock, they were also having a female issue and are living happy married life. She has further stated that she was told by

her grandfather to be 18 years of age at the relevant time. Likewise, she has stated to the police in the like manner. Stating further, she has put forth

there blatantly that she was not related with her family in any manner what so ever and the accused-appellant was her own soul. Thus, if the evidence

of the prosecutrix is summarized it comes to the four in an unequivocal terms that she accompanied the accused-appellant on her own sweet will and

during the stay for days together number of places they lived as husband and wife after entering into marriage and out of their wedlock they have a

female issue with them. One of the requirements to be established in holding the accused-appellant guilty under Section 366 IPC is that the prosecutrix

has to be kidnapped or abducted or being compelled to marry as the evidence of the prosecutrix clearly shows that she accompanied the accused-

appellant out of her own volition. The offence under Section 366 IPC are not attracted in the case in hand. Since, it has been established that on the

date of incident the prosecutrix was above 18 years of age and secondly whatever she did in accompanying the accused-appellant or that so all on her

sweet good will, the evidence and other witness including the medical evidence is not required to be dealt with an unnecessary detail. The medical

evidence is also in not that much of significance on count of acquittal of the accused-appellant under Section 376 IPC but yet the age of the

prosecutrix opined by Dr. Sharda Thakur (PW-4) come to 18 years. Investigating Officer has however supported that case of the prosecution.

8. Thus, in view of the aforesaid factual discussion, where the prosecutrix herself has been declared hostile, this Court is of the opinion that the Court

below has not considered the facts collected by the prosecution in proper perspective and has written an erroneous findings holding the accused-

appellant under Sections 363 and 366 IPC. The findings recorded by the Court below are not in consonance collected by the prosecution being so the

conviction of the accused-appellant under Section 363 and 366 IPC cannot be made to sustained the same and is hereby set aside. Accordingly, the

appeal is hereby allowed, judgment impugned is hereby set aside in toto. The accused-appellant is acquitted of all the charges leveled against him.

Being already on bail no order to set him free etc. is necessary.