

(2018) 08 CHH CK 0199

Chhattisgarh High Court

Case No: Criminal Appeal No. 455 Of 2010

Vikram Vishvakarma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Aug. 18, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 361, 363
- Code Of Criminal Procedure, 1973 - Section 437A

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ashok Dixit, Sameer Behar

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.01.2010 passed by Sessions Judge, Mahasamund (CG) in

Sessions Trial No.68/2009, wherein the said Court convicted the appellant for commission of offence under Section 363 of the Indian Penal Code and

sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.2000/- with default stipulations.

2. As per the prosecution case, on 11.5.2009 the appellant took minor prosecutrix (PW-1) or enticed her out of lawful guardianship of the said minor

without consent of her guardian namely Dayaram Yadav.

3. Learned counsel for the appellant submits that age of the prosecutrix was not proved to be below 18 years on the date of incident, therefore,

offence of kidnapping as defined under Section 363 IPC is not made out.

4. On the other hand, learned counsel for the State submits that the judgment of the trial Court is strictly in accordance with law and the same is not

liable to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Kidnapping is an offence punishable under Section 363 of IPC. As per the provisions of this section, whoever kidnaps any person from the lawful

guardianship is punishable. As per Section 361 of the IPC, whoever takes or entice any minor under eighteen years of age if a female out of the

keeping of the lawful guardian of such minor without consent of the guardian, is said to kidnap such minor or person from lawful guardianship.

7. To substantiate the charges the prosecution has examined as many as six witnesses. Dayaram Yadav (PW-6) is father of the prosecutrix and

natural guardian. In his statement, he did not depose the date of birth of the prosecutrix. In his examination-in-chief, he deposed that age of the

prosecutrix is less than 18 years and it is less by 1 $\frac{1}{2}$ months to 18 years. But version of this witness alone is not sufficient to establish the exact date

of birth of the prosecutrix. Criminal trial cannot be adjudicated on the preponderance of probability. It has to be proved by strict evidence. No date of

birth certificate was produced before the trial Court to establish the date of birth of the prosecutrix and no one examined to prove the birth certificate.

Birth certificate is a basic and historic document to establish the date of birth of anyone. If the date of birth certificate is not available then it may be

proved by school certificate. In the present case Smt. Manbai Dhruv (PW-4) who is the Headmistress of the Government Ambedkar Primary School,

Nayapara, Mahasamund deposed in para 3 that she was not posted at the time when the prosecutrix admitted in the school. Again she stated that who

brought the prosecutrix for admission is not mentioned in the school register. It is also not clear on what basis the date of birth of the prosecutrix is

recorded in the school register. Dayaram Yadav (PW-6), father of the prosecutrix, did not state that he admitted the prosecutrix in the school.

Therefore, the school certificate produced before the trial Court (Ex-P/6) is not proved by anyone who admitted the prosecutrix in the school or who

recorded her date of birth. Moreover it is not recorded on the basis of any birth certificate and therefore, the date of birth recorded in the school is not proved as per the law.

8. As the school register is not proved, date of birth of the prosecutrix mentioned in the school register as 03.02.1992 is not proved. In absence of sufficient oral or documentary evidence, it is not proved that the prosecutrix was below 18 years on the date of incident. Trial Court convicted the appellant only for the offence under Section 363 IPC and there is no appeal preferred by the State for remaining sections. Other part of the evidence adduced by the prosecution is not to be evaluated for adjudication of the present appeal. As the minority of the prosecutrix is not proved offence under Section 363 IPC is not established. The finding arrived at by the trial Court is not sustainable.

9. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under Section 363 IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.