

(2012) 03 CHH CK 0005
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 259 of 2000

Kushal Chouhan

APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 361, 363, 366, 376, 376(1)

Citation : (2012) 03 CHH CK 0005

Hon'ble Judges : Gulam Minhajuddin, J

Bench : Division Bench

Advocate : L.C. Das, for the Appellant; Akhil Mishra, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Gulam Minhajuddin, J.—This appeal has been filed by the appellant u/s 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 7th December, 1999 passed by II Additional Sessions Judge, Distt. Mahasamund in S.T. No. 325/98, whereby the appellant has been convicted for the offence u/s 363 of the Indian Penal Code and sentenced to undergo RI for three years and to pay a fine of Rs. 1000/-, in default thereof, to undergo additional SI for six months. Case of the prosecution, in brief, is that the appellant and the prosecutrix both resided at Village-Budhudongar. The appellant used to induce the prosecutrix for marrying him as his wife had died. On 5-6-1998 the prosecutrix Roop Kunwar had gone to the house of her uncle Sitaram for doing the construction work of the house and while she was returning after attending the call of nature, then the appellant again induced her and stated that the villagers would not allow them to marry and therefore, they will have to run away. On the inducement of the appellant, the prosecutrix eloped with the appellant. The appellant took her to Village-Rimji, Raurkela, Bargarh and Raipur, where he introduced her as his wife and stayed at the houses of his relatives and committed sexual intercourse with her.

2. A missing report was lodged by father of the prosecutrix on 5-6-1998, whereupon she was recovered by the police of Police Station-Saraipali, from Basna. During investigation, the crime was registered on 4-7-1998. The prosecutrix was got medically examined. Statements of the witnesses recorded and after investigation, charge-sheet was filed against the appellant for the offence punishable under sections 363, 366 and 376(1) of the IPC before the Judicial Magistrate First Class, Saraipali, However, after committal, the matter was received by the learned Additional Sessions Judge for trial from the Court of Sessions Judge. Learned trial Court framed charges u/s 366 and 376 of the IPC against the appellant, who abjured his guilt.

3. The prosecution in order to prove its case examined as many as 17 witnesses. Statement of the accused was recorded u/s 313 of Cr.P.C., in which he denied the circumstances appearing in evidence against him and pleaded innocence and false implication. However, he did not adduce any evidence in his defence.

4. Learned trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the appellant of the charge under sections 366 and 376(1) of the IPC, but convicted and sentenced him u/s 363 of the IPC, as mentioned above.

5. Heard learned counsel for the parties, perused the record of the trial Court as well as the impugned judgment.

6. Contention of learned counsel for the appellant is that the prosecution has not been successful in proving the fact that on the date of incident, the prosecutrix was below 18 years of age. He has further contended that the prosecution has also failed to prove that the appellant by inducing or by giving false promise that he will marry her, has removed the prosecutrix, who was then minor, from the lawful custody of her guardians without their consent and therefore, conviction of the appellant u/s 363 of the IPC is not sustainable on the basis of evidence on record.

7. On the other hand, learned counsel for the State has supported the impugned judgment of conviction and order of sentence.

8. The prosecution in addition to other evidence has filed copy of the Kotwari Register (Article A1-C), in which name of the prosecutrix has been shown as Hemkur, not Roop Kunwar, and the date of birth has been mentioned as 12-1-1982. The date of incident is 5-6-1998. If the date of birth of the prosecutrix is taken to be 12-1-1982, then definitely she was under 18 years of age on the date of incident i.e. 5-6-1998. Copy of the Kotwari Register (Article A1-C) has been duly proved by examining Kotwar Ghasiram (PW 7), who has stated that vide seizure memo Ex. P/6, original Kotwari Register (A-1) was seized from him by the police in the presence of witnesses and photocopy of the entries of the Kotwari Register is Article A-1C. On this point, statement of Ghasiram, Kotwar (PW 7) finds corroboration from the statement of the investigating officer S. D. Baghel, Asst. Sub-Inspector (PW 12) who has stated that during

investigation, he had seized Kotwari Register from Kotwar Ghasiram (PW 7) in the presence of witnesses vide seizure memo Ex. P/6.

9. Salikram (PW 2), father of the prosecutrix (PW 3), has stated that after about 4-5 days from the birth of the prosecutrix, that he had given information about her birth to the village Kotwar, who had recorded the same. Kotwar Ghasiram (PW 7) has stated that the information regarding birth of the prosecutrix was given to him about a month after her birth. As such, it is a fact that information regarding birth of the prosecutrix was given, at the most, a month after her birth to the Village Kotwar, on the basis of which the same was recorded in the Kotwari Register.

10. So far as the discrepancy in the name of the prosecutrix is concerned, her name has been mentioned as Hemkur in the Kotwari Register, but the names of mother and father have been mentioned correctly. Salikram (PW 2) and Urmila Bai (PW 1), who are father and mother of the prosecutrix respectively, have stated that they have only one son named Bhagirathi (PW 4) and daughter prosecutrix (PW 3) and among the two, Bhagirathi (PW 4) is elder. No suggestion has been given to the prosecution witnesses that one more daughter was born to Urmila Bai (PW 1), whose name was Hemkur.

11. Thus, on the basis of evidence adduced, it stands proved that on the date of incident, the prosecutrix was a minor, below 18 years of age.

12. From the statement of the prosecutrix (PW 3) and her parents as well as her brother Bhagirathi (PW 4), it is found that the appellant by inducing the prosecutrix that he will marry her, had taken her along with him to various places without consent of her guardian i.e. her father Salikram (PW 2). As such, in view of the definition given in section 361 of the IPC, it stands proved that the appellant has committed offence of kidnapping, which is punishable u/s 363 of the IPC and the trial Court has committed no illegality or infirmity in convicting the appellant u/s 363 of the IPC. The sentence imposed upon him also cannot be said to be disproportionate to the offence, in view of the totality of the facts and circumstances. In the result, the appeal fails and is, accordingly, dismissed, The appellant is on bail, therefore, his bail bonds are cancelled and he is directed to be taken into custody forthwith to undergo the remaining sentence.