



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 965 of 2021**

- Anil Ratre S/o Ghashiram Ratre Aged About 22 Years R/o Ahilda, Chowki Lawan, Police Station Kasdol District Baloda Bazar-Bhatapara, Chhattisgarh.

---- **Petitioner****Versus**

- State Of Chhattisgarh Through District Magistrate Baloda Bazar-Bhatapara, Chhattisgarh.

---- **Respondent**

For Appellant

Mr. Pragalbh Sharma, Advocate

For Respondent /State

Ms. Shubha Shrivastava, Panel Lawyer

SB: Hon'ble Mr. Justice Deepak Kumar Tiwari
Judgment On Board25/3/2022

1. This appeal is directed against the judgment of conviction and order of sentence dated 27.8.2021 passed in Special Criminal Case (POSCO) No.27/2018 by the Additional Sessions Judge, F.T.S.C. (POSCO Act), District Baloda Bazar (CG) whereby, the appellant has been held guilty for the offence as mentioned hereunder :

Conviction	Sentence
Under Section 363 of the IPC	RI for 3 years and fine of Rs.500/-, in default of payment of fine, RI for 3 months
Under Section 366 of the IPC	RI for 3 years and fine of Rs.500/-, in default of payment



	of fine, RI for 3 months
Under Section 4 of the POSCO Act	RI for 7 years and fine of Rs.500/-, in default of payment of fine to undergo RI for 3 months.

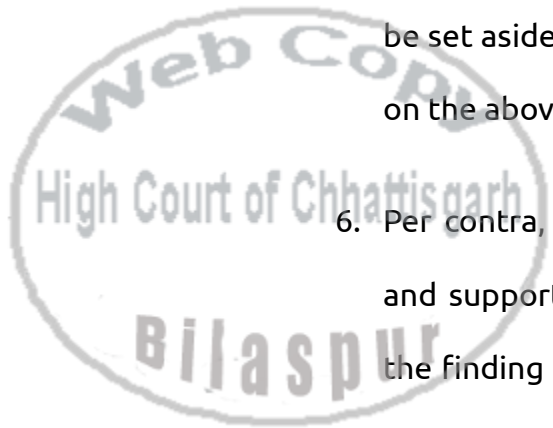
2. The prosecution case is that the prosecutrix (PW-4), aged about 17 years and the appellant, both were having a love affair. On 11.5.2017, at night, when everyone were asleep, the prosecutrix ran away from the house. The father of the prosecutrix (PW-5) lodged a missing report on 12.5.2017 vide Ex.P/23 in this regard. The prosecutrix was recovered from the custody of the appellant on 6.5.2018, and out of their such relationship, a child was also born, who was 3 months of age, vide Recovery Memo-Ex.P/6. On the basis of the information given by the father of the prosecutrix (PW-5), initially, an offence under Section 363 of the IPC was registered vide Ex.P/12. During investigation, the School Admission Register-Ex.P/14 was seized, in which, the date of birth of the prosecutrix has been recorded as 10.7.2000. The prosecutrix did not consent for the medical examination and the appellant was found capable of performing sexual intercourse (Medical Examination Report-Ex.P/18). The statements were recorded and the Site Map-Ex.P/23 was prepared and after completion of the investigation, the charge sheet has been filed.
3. In order to prove its case, the prosecution examined as many as 18 witnesses. The appellant abjured his guilt and in his statement recorded under Section 313 of Cr.P.C., he stated that





he is innocent and has been falsely implicated in the case. The appellant has not examined any witness in his defence.

4. After completion of trial, the appellant vide the impugned judgment, has been convicted and sentenced as mentioned above.
5. Learned counsel for the appellant submits that the impugned judgment is contrary to law and the trial Court has failed to appreciate the evidence in its proper perspective, therefore, the impugned judgment suffers from illegality and deserves to be set aside. Learned counsel prays for acquitting the appellant on the above grounds.
6. Per contra, learned counsel for the State opposes the appeal and supports the impugned judgment. He would submit that the finding of the trial Court is based on proper marshelling of evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.
7. Heard learned counsel for the parties and perused the record of the Court below.
8. The prosecutrix (PW-4) deposed that two years prior to the incident, she was having a love affair with the appellant and when her family members came to know about the said fact, they started searching groom for her. When this came to the knowledge of the prosecutrix, she voluntarily left her house and went to Raipur. After reaching Raipur, the prosecutrix





searched for the appellant's mobile number and on contacting him, she found that at that time, the appellant was at Bangalore. The prosecutrix asked her to take her along with him, on which, the appellant said that since she is minor, she cannot accompany him. When the prosecutrix insisted and said that she has turned major, then also, the appellant denied. On prosecutrix's constant requests and pressure and threat to commit suicide, the appellant gave up, reached Raipur and took her along with him. The prosecutrix specifically stated that the appellant has done nothing wrong with her or against her will.

She further deposed that her family members were opposed to her relationship with the appellant, therefore, they have lodged the FIR against the appellant. The prosecutrix specifically stated that she is aged 21 years and her date of birth was wrongly recorded in the Birth Certificate. The prosecutrix also stated that they have got married and out of their wedlock, one child is also born, who has turned a year old. She has proved the Birth Certificate of the child vide Ex.P/5. The prosecutrix has not consented for her medical examination vide Ex.P/7, therefore, Dr. Khusboo Bajpayee (PW-10) has not examined her.

9. In a case of sexual molestation, the evidence of the prosecutrix is significant. Having minutely gone through the statement of the prosecutrix, it appears that she has not inculpated the appellant in any manner and nor said anything against him instead she has specifically deposed that her family members





wanted to get her married against her will to some other boy, therefore, she voluntarily left her house. In such circumstances, when she was not ready to return to her home, the appellant assisted her due to having a love affair.

10. In the matter **S. Varadarajan Vs State of Madras, AIR 1965 SC 942**, the following was observed by the Supreme Court in paras 9 & 10 :

"9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

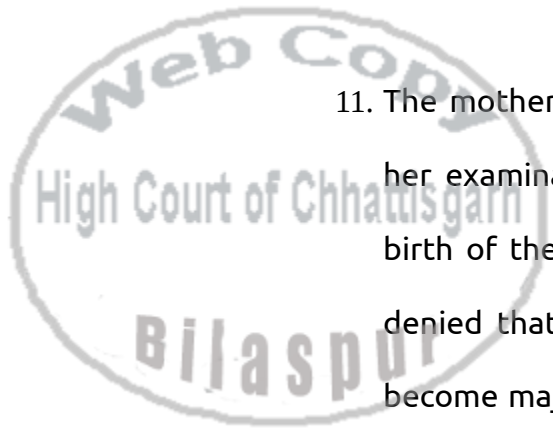
10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those





things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

11. The mother of the prosecutrix (PW-3) has stated in para 3 of her examination that she could not state the exact date of birth of the prosecutrix. The father of the prosecutrix (PW-5) denied that on the date of the incident, the prosecutrix has become major. Puniram Yadav (PW-8) Head Master has proved the School Admission Register-Ex.P/14, in which, the date of birth of the prosecutrix was recorded as 10.7.2000, when she was in 6th standard, but this witness has admitted in the cross-examination that he could not show as to on what basis, the said date of birth has been recorded. The said Register was seized by Puniram Tandon, IO (PW-14) vide Ex.P/13. The prosecutrix herself denied her date of birth recorded in the School Register to be correct and stated that on the date of the incident, she has turned major and has voluntarily joined the company of the appellant.





12. In view of the above, it is not proved that the appellant has abducted the prosecutrix from the lawful guardianship of her parents and induced in any manner and further looking to the statement of the prosecutrix to the effect that the appellant has not committed any wrong with her, no adverse inference can be drawn by this Court.

13. For the foregoing, this Court finds that the trial Court has not properly appreciated the evidence available on record and hence, reached to a wrong finding, which is perverse.

14. Therefore, the appeal is allowed. The impugned judgment of conviction and sentence is set-aside and the appellant is acquitted of the aforementioned charge.

15. The appellant is presently in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.5,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

16. The record of the trial Court be sent back forthwith along with a copy of the judgment for necessary compliance.

Sd/-

(Deepak Kumar Tiwari)
Judge

**HEAD NOTE****CRA No. 965 of 2021**

When the accused has not played any active role or persuaded the victim and the victim voluntarily left the protection of her parents and having capacity to know her action, no offence of abduction is made out.

जब अभियुक्त ने अपहरण के अपराध में सक्रिय भूमिका न निभाई हो अथवा पीड़िता को बहलाया-फुसलाया न हो तथा पीड़िता ने अपना हित-अहित जानते हुए स्वेच्छा से अपने माता-पिता के संरक्षण को त्यागा हो, तब अपहरण का अपराध गठित नहीं होगा।

