



2025:CGHC:24228-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 2176 of 2024**

Mohammed Siraz S/o Late Mohammad Aged About 19 Years R/o Sabji Mandi, Chantidih, Near Mastana Mandir, Sarkanda, Police Station-Sarkanda, District- Bilaspur, Chhattisgarh.

--- Appellant

versus

State of Chhattisgarh Through The Station House Officer, Police Station, Sarkanda, District- Bilaspur, Chhattisgarh.

--- Respondent

CRA No. 90 of 2025

1 - Smt. Sarita David Wd/o Late Vinay David Aged About 36 Years R/o Ward No. 4, Lokhandi, P.S. Sakri, District Bilaspur Chhattisgarh.

2 - Ku. Vipasa David Age 18 Years 07 Months, D/o Late Vinay David, R/o Ward No. 4, Lokhandi, P.S. Sakri, District Bilaspur Chhattisgarh.

---Appellants

Versus

State of Chhattisgarh, through S.H.O. of Police Station Sarkanda, District Bilaspur, Chhattisgarh.

--- Respondent

(Cause Title taken from Case Information System)

For Appellant in CRA 2176/2024	: Mr. Ajay Chandra, Advocate
For Appellant in CRA 90/2025	: Mr. Pallav Mishra, Advocate
For State/Respondent	: Mr. Malay Jain, Panel Lawyer

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Bibhu Datta Guru, Judge****Judgment on Board**

Per Ramesh Sinha, Chief Justice

16.06.2025

1. Since both the above-captioned appeals arise out of a common factual matrix and same incident, this Court is disposing of the same by a common judgment.

2. Both the above captioned Criminal Appeals have been preferred under Section 374(2) of the CrPC against the impugned judgment of conviction and order of sentence dated 27.11.2024 passed by the Special Judge (NIA Act), Bilaspur (C.G.) in Special Case (NIA) No.55/2024 by which the appellants have been convicted and sentenced in the following manner with a direction to run all the sentences concurrently :

CONVICTION	SENTENCE
Section 363/34 of IPC	R.I. for 5 years fine of Rs. 500/-, in default of payment of fine, additional R.I. for 1 month
Section 366A/34 of IPC	R.I. for 5 years fine of Rs. 500/-, in default of payment of fine, additional R.I. for 1 month
Section 328/34 of IPC	R.I. for 5 years fine of Rs. 500/-, in default of payment of fine, additional R.I. for 1 month
Section 342/34 of IPC	R.I. for 6 months fine of Rs. 100/-, in default of payment of fine, additional R.I. for 15 days
Section 370/34 of IPC	R.I. for 10 years fine of Rs. 1,000/-, in default of payment of fine, additional R.I. for 2 months

3. Case of the prosecution, in brief, is that on 29.11.2022, the minor victim (PW-1) was in the house situated at Shyam Nagar Lingiyadih Bilaspur near Kali Mandir. The father of the minor victim (PW-4) was doing some work inside the house when the accused Vipasha David came home with the accused Mohd. Siraz and coaxed the minor victim (PW-1) by saying that it was the birthday of the brother of the accused Vipasha David. Thereafter, the victim (PW-1) had left the house for accused Vipasha David's house in Lokhandi without informing her mother (PW-3) and father (PW-4). Accused Vipasha David and Mohd. Siraz took victim (PW-1) to their house in Lokhandi after driving for a long time. In the meantime, victim's mother (PW-3) called accused Vipasha David's mother, accused Sarita David and accused Mohd. Siraz and asked for information about victim (PW-1). Then accused Sarita David said that victim (PW-1) had not come to their house. At around 8-9.00 pm, accused Vipasha David and accused Sarita David mixed something in the juice and gave it to victim (PW-1) to drink. After drinking, victim (PW-1) started feeling dizzy. Then accused Sarita David and Vipasha David took victim (PW-1) to the room and made her lie on the bed. After this, a person (unknown) aged 21-22 years came and raped victim (PW-1). On calling, accused Vipasha David and Sarita David did not open the door. Accused Mohd. Siraz and accused Sarita David threatened the victim (PW-1), due to which she did not go home even on 30.11.2022. At 11.30 pm, accused Vipasha David and accused Mohd. Siraz left victim (PW-1) near Shanichari Rapta in Activa. On 01.12.2022, the mother of the victim

(PW-3), informed the police that on 29.11.2022 in the afternoon, the accused Vipasha David and Mohd. Siraz came to the house and took away the victim with them without informing anyone. On the said information, Assistant Sub-Inspector Dinesh Tiwari (PW-9) registered a missing report vide Ex.P-20 at 11.30 pm and First Information Report under Section 363 of IPC against accused Vipasha David and Mohd. Siraz vide Ex.P-5. On 01.12.2022 at about 6-6.30 pm, the victim (PW-1) reached home and informed her mother (PW-3) and father (PW-4) about the incident.

4. On 01.12.2022, victim (PW-1) was recovered from mother (PW-3) and father (PW-4) as per recovery panchnama Ex.P-1. After inspecting the spot, a site map Ex.P-6 was prepared. After obtaining consent from victim's mother, the victim was sent for medical examination along with lady constable number 1303 Jigyasa Kaushik (PW-6) to CIMS Bilaspur along with the medical examination form. Dr. Prachi (PW-2) has examined the victim and provided the report Ex.P-4. Assistant Sub-Inspector Dinesh Tiwari (PW-9) during investigation seized the sealed panty, vaginal slide and blood sample of the victim when presented by the lady constable from the hospital as per seizure memo Ex.P-10. Two mobile phones of Oppo and Vivo company and the key of the lock kept at the scene of crime have been seized from accused Sarita David as per seizure memo Ex.P-8. Accused Mohd Siraz has been arrested as per Ex.P-28 and information has been given to the family as per Ex.P-28. Accused Sarita David and Bipasha David

have been arrested as per Ex.P-25 and Ex.P-26. Letter Ex.P-30 has been sent to Judicial Magistrate First Class, Bilaspur for recording the written statement of victim. Written statement of victim (PW-1) has been recorded as per Ex.P-3. Memo (Ex.P-14) has been sent to the Tehsildar, Sakri, regarding getting the site map prepared by the Patwari. Patwari Ashok Dhruv (PW-7) has prepared the site map cum panchnama vide Ex.P.7.

5. During the investigation, Assistant Sub-Inspector Dinesh Tiwari (PW-9) seized the Dakhil Kharij Register of the victim on presentation by Headmistress Mrs. Veena Sharma (PW-8) vide Ex.P-17. Letter (Ex.P-21) has been sent for obtaining CDR, SDR and tower dump location of the mobile numbers of the accused on the date of incident. In this case, the seized properties have been sent to Forensic Science Laboratory, Bilaspur for chemical testing through the memorandum of Superintendent of Police Ex.P-22. The seized blood sample has been sent to CIMS Bilaspur for testing through the memorandum of Superintendent of Police Ex P-23. The receipt of depositing goods in FSL is Exhibit P.24.
6. During the investigation, Inspector Durga Kiran Patel (PW5) recorded the statement of victim (PW-1) in the presence of victim's mother (PW-3). Thereafter, after completing the investigation, the chargesheet against the accused was presented before the competent Court. On 07.06.2024, the case was transmitted to the Court of Special Judge (NIA Act), Bilaspur.

7. Accused Sarita David, Vipasa David and Mohd. Siraz were charged under Sections 363/34, 366C/34, 328/34, 342/34, 370/34 of the Indian Penal Code and accused Mohd. Siraz was further charged under Sections 376 DA of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). They have denied committing the crime and said that they are innocent and have been falsely implicated. The accused have not produced any defence evidence.
8. In support of its case, the prosecution has examined the victim (PW-1), Dr. Prachi (PW-2), victim's mother (PW-3), victim's father (PW-4), Inspector Durga Kiran Patel (PW-5), Lady constable No. 1303 Jigyasa Kaushik (PW-6), Patwari Ashok Dhruv (PW-7), Headmistress Veena Sharma (PW-8), Assistant Sub-Inspector Dinesh Tiwari (PW-9).
9. After appreciation of evidence available on record, while acquitting accused Mohd. Siraz for the offence punishable under Sections 376 DA of the IPC and Section 6 of POCSO Act, the learned trial Court has convicted and sentenced the accused/appellants as aforementioned. Hence, these appeals.
10. Learned counsel for the appellants argued that the prosecution has failed to appreciate that the prosecution has not proved the actual age of the victim that on the date of incident she was below the age of 18 years and has also failed prove the case against the appellants beyond reasonable doubts. It has been

further argued that the appellants had never abducted the victim from her lawful guardianship and they have also not detained the victim anywhere. Even as per case of prosecution, though the victim was missing since 29.11.2022 and the missing report was lodged by her mother only on 01.12.2022 *i.e.*, after two days and on the same day, the victim herself came back to her home. They submitted that the learned trial Court has failed to appreciate that the victim (PW-1) and co-accused Ku. Vipasa David as well as Smt. Sarita David were well known to each other and due to previous friendly relationship, the victim herself went along with Ku. Vipasha David, they were nowhere involved in human trafficking. It has been further submitted that the learned trial Court has erred in convicting the appellants only on the basis of evidence of interested witnesses *i.e.* the victim, her mother and her father, though there are material contradictions and omissions in their statements. The victim in her statement has stated that accused Vipasa alone had come to her house and she along with Vipasa came upto Mahamaya Chowk, fromwhere, they went to house of Vipasa in the Activa of accused Mohd. Siraj whereas as per statement of victim's father, all the three accused had come to their house and saying that it was the birthday of the brother of the accused Vipasha David without informing him, they had taken her daughter. There is no corroborative or clinching material adduced by the prosecution to hold the conviction of the appellants under the alleged offences, therefore, impugned conviction of the appellant deserves to be quashed.

11. On the other hand, learned counsel for the State opposes and contends that the victim was minor and below 18 years of age at the time of incident which is proved by the School admission and discharge register Ex. P/19C which contains the date of birth of the victim as 08.04.2009 and the victim herself has stated in her statement that her date of birth is 08.04.2009. Though the father and mother have stated that they do not remember the date of birth of the victim, but have specifically stated that she was around 13-14 years of age. The school register is admissible piece of evidence to determine the age of the victim. Therefore there is no legality or infirmity in the findings of the learned trial court. The victim was abducted by the appellants and kept away from the lawful guardianship. The appellants kept her in illegal confinement for a considerable period and given the administered juice to her due to which she started feeling dizzy and one unknown person had forcefully committed sexual intercourse with her. Thus, the prosecution had proved its case beyond reasonable doubt. As such, the impugned judgment of conviction and sentence needs no interference.
12. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
13. The first question for consideration would be, whether the trial Court is justified in convicting the appellants for offence under Section 363/34 of the IPC ?

14. The appellants have been convicted for offence under Section 363 of IPC, which is punishable for kidnapping. Kidnapping has been defined under Section 359 of the IPC. According to Section 359 of the IPC, kidnapping is of two kinds: kidnapping from India and kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship which states as under:-

“361. Kidnapping from lawful guardianship.-Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

15. The object of Section 359 of the IPC is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons. Section 361 has four ingredients:-

- (1) Taking or enticing away a minor or a person of unsound mind.
- (2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.
- (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- (4) Such taking or enticing must be without the consent of such guardian.

So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are : (i) that the girl was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian.

16. The Supreme Court while considering the object of Section 361 of the IPC in the matter of **S.Varadarajan v. State of Madras**¹, took the view that 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 and held that 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 and held as under:-

“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. 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 fulfilment of the intention of the girl. But that part 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”.”

1 AIR 1965 SC 942

17. Reverting to the facts of the present case in light of ingredients of offence under Section 361 of the IPC which is punishable under Section 363 of the IPC & as well as principles of law laid down by the Supreme Court in the matter of **S.Varadarajan** (supra), it is evident that the victim herself had gone with accused Vipasha David without intimating her father, who is stated to be in home at that time and thereafter, they had gone to the house of accused Vipasha David in Activa of accused Mohd. Siraz and again after taking the Activa from accused Mohd. Siraz, both the victim and accused Vipasha David had gone to the house of Vipasha's friend for a stroll and thereafter, instead of going to her home, the victim herself had gone to house of accused Vipasha in the late night. As such, there is no evidence on record that at any point of time the appellants solicited or persuaded the victim to leave the company of her parents. On the other hand, it is clearly established that the victim herself accompanied the appellants. As such, there is no inducement to the victim by the appellants to leave the lawful guardianship of her parents. Therefore, in the considered opinion of this Court, the act/omission of the appellants, if any, would not tantamount to "taking" within the meaning of Section 361 of the IPC in light of judgment of the Supreme Court in **S.Varadarajan** (supra). Similarly, there is no evidence of enticing the minor victim by the appellants. As such, the trial Court is absolutely unjustified in convicting the appellants for offence under Section 363 /34 of the IPC.

18. The next question for consideration would be, whether the trial Court is justified in convicting the appellants for offence under Section 366A/34 of the IPC ?
19. Dr. Prachi (PW-2), who conducted medical examination of the victim, has submitted that there was no injury on the external or internal part of the body of the victim and she has further stated that it cannot be said with certainty whether any rape incident took place with the victim or not. Moreover, urine pregnancy test was also found to be negative. Further, though the cloths recovered from the victim and her blood samples were sent to FSL, but the report of same has not been obtained till date.
20. From perusal of the evidence of the victim girl, it appears that victim girl was simply accompanied the accused without being enticed or influenced. Mere accompanying a person without being induced does not constitute an offence under Section 366 of the IPC. Though, the learned Panel Lawyer vehemently contended that age of the victim girl has been proved by the prosecution that she is minor as on the date of incident, nevertheless, in order to convict the accused for the offence under Section 366A of the IPC, other two essential ingredients i.e. the victim girl must be induced by the accused and she must be induced by the accused person to go from a place or to do any act with an intent that such girl may be knowing that it is likely that she will be forced or seduced to illicit intercourse by another person. As such, the prosecution has failed to prove the

ingredients of offence under Section 366A of the IPC. As such, we are considered opinion the trial Court is absolutely unjustified in convicting the appellants for offence under Section 366 /34 of the IPC.

21. The next question for consideration would be whether the prosecution has been able to bring home the offence under Sections 328/34 of the IPC beyond reasonable doubt against the appellants herein.
22. In order to prove the offence punishable under Section 328 IPC, it is necessary for the prosecution to establish beyond reasonable doubt two essential ingredients, namely administration of poison or stupefying or unwholesome substance or drug and intention to cause hurt or knowledge that it is likely to cause hurt to a person to whom the substance or drug is administered. Administration of substance or drug had its own consequence in this case which was in the nature of rendering the appellants incapacitated thereby fulfilling the second ingredient of the offence punishable under Section 328 I.P.C. The second ingredient is about administering a poison or stupefying substance etc. with an intention to cause hurt or injury or commit an offence or facilitate commission of an offence or with the knowledge that the act is likely to result in causing of hurt. Hurt as defined in Section 319 IPC is bodily pain, disease or infirmity. Unconsciousness is a mental and physical condition of a person which incapacitates him completely in the sense that he is incapable of doing

anything. Dictionary meaning of the term 'infirmity' is physical or mental weakness (See: Concise Oxford Dictionary, Indian Edn. p.729). If physical or mental weakness or both make a man infirm, his being in unconscious state will make him all the more infirm. Therefore, inducing unconsciousness of a person by means of a poison, stupefying substance etc. as contemplated under Section 328 IPC amounts to causing of hurt.

- 23.** In the instant case, the minor victim had stated that she was given some intoxicating substance along with the juice, which caused her senselessness and hence, the rape was committed upon her, even the prosecution had obtained her blood for the purpose of examination still prosecution has not submitted FSL report before the trial Court and further that the medical report also does not support the case of victim and no recovery with respect to any intoxicating drugs is made from the appellants, further the prosecution has also failed to arrest the main accused, who had allegedly committed the offence of rape with the minor victim despite the fact that victim had stated his name in her Court deposition. As such, in our considered opinion that the trial Court is absolutely unjustified in convicting the appellants for offence under Section 328 /34 of the IPC.
- 24.** The learned trial Court has also convicted the appellants under Section 342/34 of IPC. Section 342 of the IPC deals with the offence of wrongful confinement. As discussed earlier that the victim herself had accompanied accused Vipasha David and

gone with her without intimating her father, who was in the home and also that the victim was freely moving in the Activa of accused Mohd. Siraz, there is no evidence that the victim was in wrongful confinement. As such, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellants for offence under Section 342 /34 of the IPC.

25. In this case, the appellants have also been convicted under Section 370/34 IPC. Section 370(1) IPC defines the offence of trafficking, which reads as under:-

“370(1):- Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in determination of the offence of trafficking.

26. From perusal of the aforesaid provision, it is clear that there should be an element of exploitation. The word 'Exploitation' has been defined in the Black's Law Dictionary, sixth edition, as under:-

"Exploitation. Act or process of exploiting, making use of, or working up. Utilization by application of industry, argument, or other means of turning to account, as the exploitation of a mine or a forest. *State Finance Co. v. Hamacher*, 171 Wash. 15, 17 P.2d 610, 613. Taking unjust advantage of another for one's own advantage or benefit (e.g. paying low wages to illegal aliens)."

27. Similarly, the word "exploitation" has been defined in Longman Dictionary of Contemporary English Edition as under:-

"exploitation (1) a situation in which you treat someone unfairly by asking them to do things for you, but give them very little in return - used to show disapproval: [+of] The film industry thrives on the sexual exploitation of women. (2) the development and use of minerals, forests, oil etc for business or industry : [+of] the controlled exploitation of resources | commercial/ economic exploitation 3 the full and effective use of something : [+of] greater exploitation of these data (4) an attempt to get as much as you can out of a situation, sometimes unfairly : [+of] the exploitation of religion for political ends."

28. Further, the explanation (1) of Section 370 IPC explains exploitation, which shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
29. From the evidence, we do not find any material which would suggest that the victim exploited. None of the witness stated about exploitation. Admittedly, this is not a case of sexual assault nor of indecent behavior with the victim by the appellants. Further the victim herself had gone with accused Vipasha David without intimating her father, who is stated to be in home at that relevant point of time and thereafter, they had gone to the house of accused Vipasha David in Aactiva of accused Mohd. Siraz and again after taking the Aactiva from accused Mohd. Siraz, both the victim and accused Vipasha David had gone to the house of Vipasha's friend for a stroll and thereafter, instead of going to her home, the victim herself had gone to house of accused Vipasha in the late night. Considering the aforesaid evidence, we do not find any ingredients to attract Section 370 of the Indian Penal Code against the appellants.
30. As a fallout and consequence of the aforesaid legal analysis, the criminal appeal is **allowed** and impugned judgment of conviction and order of sentence dated 27.11.2024 passed by the Special Judge (NIA Act), Bilaspur (C.G.) in Special Case (NIA) No.55/2024 convicting and sentencing the appellants for the offences under Sections 363/34, 366A/34, 328/34, 342/34 and

370/34 of the IPC is hereby set aside. The accused / appellants are acquitted of the said charges levelled against them. The appellants are in jail since 25.03.2019. They shall be set at liberty forthwith if no longer required in any other criminal case.

31. Keeping in view of the provisions of Section 437-A CrPC, the appellants are directed to furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure for a sum of Rs.25000/- (each) with 2 reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months alongwith an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereon shall appear before the Hon'ble Supreme Court.
32. The Trial Court record alongwith the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head – Note

Mere suspicion is not enough to prosecute the accused for offence punishable under Section 370 of the IPC for human trafficking in absence of cogent evidence in relation of exploitation.