



2026:CGHC:23803



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1038 of 2004

Reserved On : 25.04.2026

Delivered On : 15.06.2026

1. Chini @ Sudhanya S/o Gwal Udiya Aged About 25 Years R/o Teetalagarh District Balangir, Orissa
2. Santosh S/o Kursa Gada Aged About 19 Years R/o. Tursi P.S. Bhawani Parag District Kalahandi (Orissa) At Present Alambada District Shahadol (M.P.)

... Appellants

versus

- State Of Chhattisgarh Through District Magistrate Bilaspur (C.G.)
Matter arising out of P.S. Tarbahar District Bilaspur (C.G.)

... Respondent

For Appellants	: Mr. Manoj Kumar Jaiswal, Advocate appointed through Legal Aid Committee
For State	: Mr. Krishna Gopal Yadav, Dy. Government Advocate and Ms. Laxmin Kashyap, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This criminal appeal has been filed by the appellants against the judgment dated 29.11.2004 passed by the learned Eighth Additional Session Judge (FTC) Bilaspur (C.G.) in Sessions Trial No. 233/2004 whereby the appellants have been convicted and sentenced in the following manner:-

Conviction	Sentence
U/s 363, 363/34 of IPC	4 years R.I. & fine of Rs. 2000/- to each of the appellants in default of payment of fine to undergo additional R.I. for 6 months



U/s 366, 366 r/w 34 of IPC	:	5 years R.I. & fine of Rs. 3000/- to each of the appellants in default of payment of fine to undergo additional R.I. for 6 months
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(Both the sentences are ordered to run concurrently)

2. The case of the prosecution, in brief, is that the accused Santosh who was in love with the victim. On 16.02.2004 alluring the victim sent co-accused Chini @ Sudhanya to victim's house at Construction Colony Bilaspur with intention to marry with him and took her to Raigarh without consent of her guardians and thereafter she was taken to Titlagarh by train to the house of the accused which has compelled the brother of the victim to lodge a missing report at Tarbahar Police Station. On the basis of report, the Police registered bearing Crime No. 81/2004 (Ex. P/8) at Police Station, Tarbahar, Bilaspur on 22.02.2004 for commission of offence under Sections 363/366 of IPC.
3. After completion of investigation and collection of material, the prosecution has submitted the charge sheet before the Chief Judicial Magistrate, Bilaspur, who committed the case to the Court of Sessions for trial in accordance with law. In order to bring home guilt of the appellants, the prosecution has examined as many as 08 witnesses namely- victim (PW/1), Sheikh Saifruddin (PW/2), Sheikh Nijamuddin (PW/3), Dharmendra Singh (PW/4), Zareena Parveen (PW/5), Mrs. Besterwich [Principal] (PW/6), Abdul Kadir (PW/7), B.S. Singh [ASI] (PW/8) and also exhibited documents from Ex. P/1 to Ex. P/10.
4. Statements of accused/appellants have been recorded under Section 313 Cr.P.C., in which they have denied the allegations leveled against them and pleaded innocence and false implication. The accused abjured their guilt and to prove their innocence, they have exhibited documents namely statement of victim (Ex. D/1) and statement of Saifruddin (Ex. D/2).



5. Learned trial Court after appreciating the evidence and material available on record, vide its judgment dated 29.11.2004 has held that appellants have committed the offences under Sections 363 and 366 of I.P.C. and thereby sentenced them for the offences as mentioned in opening paragraph of the judgment. Being aggrieved and dissatisfied with the aforesaid judgment of conviction & order of sentence, instant criminal appeal has been preferred by the appellants challenging the same. This Court while admitting the instant appeal on 21.12.2004, has granted bail to the appellants.
6. Learned counsel for the appellants would submit that the appellants have been falsely implicated in this case. He would further submit that learned trial Court ought not have convicted the appellants on the basis of evidence and ought not have concluded that the charges with respect to Section 363 and Section 366 read with Section 34 of IPC were brought to home in absence of the credible, reliable and trustworthy evidence in the case. He would further submit that the trial Court ought not have believed the materials so projected either by direct evidence or by documents to prove the minority of the said victim in the case. He would further submit that the trial Court should have considered that the prosecution is unable to prove the age of the victim below 18 years and is also unable to prove the essential ingredients of the offence for which the accused have been charged by beyond reasonable doubt, therefore, it should have been given benefit of doubt to the accused and should have acquitted the appellants and would pray for allowing the appeal.
7. Per contra learned counsel for the State opposing the submission would submit that finding recorded by learned trial Court is legal and



justified and would pray for rejection of the instant appeal.

8. I have heard learned counsel for the parties and perused the material available on record with utmost circumspection.
9. From the submissions made by the parties, the point for determination for this Court is whether the conviction of the appellants for commission of offence by the learned trial Court under Sections 363 and 366 read with Section 34 of IPC suffers from perversity or illegality warranting interference by this Court.
10. To appreciate the point emerged for determination, it is expedient for this Court to extract Section 363 and 366 of IPC which reads as under:

"363. Punishment for kidnapping- Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.]"

11. From the evidence of the victim (PW/1) recorded before the trial Court in her examination-in-chief has stated that her date of birth is 14.11.1986. But in the cross-examination, in paragraph 5 she has stated that she is not aware about her date of birth. She has also stated that she was studying in Shahdol and she had left the school prior to 5-6 years. The witness has admitted that when she left the house at that time her niece awoke and also admitted that she was



waiting for accused Chini @ Sudhanya and was ready to go, but voluntarily stated that Zareena Parveen (PW/5) has told her that if he would not go then accused Santosh will commit suicide. The victim has also stated that why he wants to carry her, is not known to her, probably he must like her. She has also admitted that she is knowing the age to be 17 years as per the information given by her brother and her age may be 18 years and also admitted when Zareena Parveen (PW/5) used to visit her, there was discussion regarding love, but she has not informed this discussion to her brother as she was afraid of them. She has also admitted that when Zareena Parveen (PW/5) used to visit her sister-in-law was not taking any objection. She has also admitted that when she has left the house she has carried 5-6 pair of clothes.

12. From the record of the case it further demonstrates that the victim's statement was recorded twice on 22.02.2004 and 23.02.2004. The victim in her statement recorded on 22.02.2004 under Section 161 of Cr.P.C. has stated that her date of birth is 14.01.1986 and in the statement recorded under Section 161 of Cr.P.C. (Ex. D/1) on 23.02.2004 prima facie from bare eyes reflects that there is manipulation in the date of birth of the victim as before 1 small 1 has been inserted and date of birth has been mentioned as 14.11.1986.
13. Sheikh Saifruddin (PW/2) brother of the victim has stated in his examination-in-chief that the birth year of the victim is 1986, but he is not aware about exact date of birth of the victim. The prosecution to prove the date of birth of the victim has examined Principal of the school who in the cross-examination has admitted that at the time of



admission he has not taken any date of birth certificate issued by the Kotwar only on oral information date of birth has been recorded. He has also stated that victim's uncle has given the information about the date of birth and accordingly it has been recorded in the School Certificate (Ex. P/4).

14. The Star witness of the prosecution Zareena Parveen (PW/5) has stated in her examination-in-chief that she is friend of the victim, as such, the victim told her that Santosh intends to marry her and Chini @ Sudhanya will come to her house to take her for marriage.
15. From the analysis of the evidence, it is quite vivid that the prosecution is unable to prove that the victim was below 18 years as while recording the date of birth of the victim in the School record as 14.11.1986, no documentary proof like Kotwar Register, copy of date of birth certificate were taken into consideration. Similarly, the victim is also unable to depose her exact date of birth and in the statement recorded under Section 161 of Cr.P.C. on 22.02.2004 her date of birth has been mentioned as 14.01.1986 and in the statement recorded on 23.02.2004 there is manipulation in the date of birth it is reflected from the bare eyes that before 1 small 1 has been added which clearly proved that the prosecution is unable to prove the age of the victim below 18 years beyond reasonable doubt. Even Sheikh Saifruddin (PW/2) brother of the victim as admitted by him that he is not aware about the exact date of birth of the victim, as such the finding recorded by the learned trial Court in paragraph 13 of the judgment that the victim was minor on the date of incident suffers from perversity, illegality and liable to be set aside by this Court. The issue regarding



proving of the age is always subject matter of scrutiny and examination before the Hon'ble Supreme Court and the High Courts. The Hon'ble Supreme Court in case of ***Manak Chand Alias Mani vs. State of Haryana*** reported in **(2024) 20 SCC 561** has held as under:-

"18. This Court in *Birad Mal Singhvi v. Anand Purohit* (1988) Supp SCC 604 had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

"14....The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

19. In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.

20. Secondly, we cannot lose sight of the fact that since age was such a crucial factor in the present case, the prosecution should have done a bone ossification test for determination of the age of the prosecutrix. This has not been done in the present case. On the other hand, as per the clinical examination of the prosecutrix which was done by PW-1, Dr. Kulwinder Kaur on 28.10.2000 and which has also been referred to in the preceding paragraph of the present judgment, we find that the secondary sex characteristics of the prosecutrix were well developed. The doctor in her report mentions that the prosecutrix is a "well built adult female". At another place it mentions "well developed pubic hair" and "external genitalia were fully developed and normal". It



then records her age as sixteen years as told to her by the mother of the prosecutrix. The report records that there were no external marks of injury over her breast, neck, face, abdomen and thigh. The report then concludes, inter alia, about her age as under:

“At the time of medical examination of the patient, no force seems to have been used against her. I cannot opine about the age of the patient on the basis of development of her pubic hairs and genitalia etc. The patient was habitual to sexual intercourse because her labia minora was hypertrophied and hymen admitted two fingers.”

21. The doctor has refrained from giving an opinion herself as to the age, but in the same report the age is recorded as sixteen years. Under the facts and circumstances of the case, what was required to be done was a bone ossification test in order to come to some reliable conclusion as to the age of the prosecutrix. This has evidently not been done. Moreover, it has also come in evidence that the mother of the prosecutrix too had said that her daughter was sixteen years of age.”

16. Thus, the prosecution is unable to prove beyond reasonable doubt that the victim was minor on the date of incident. Now this Court is examining whether the prosecution is able to prove beyond reasonable doubt that the victim was kidnapped to compel her for marriage by the accused. From the evidence of the victim (PW/1), it is quite vivid that the victim herself admitted that in the night she was waiting for accused Chini @ Sudhanya and was ready to go and also admitted that when she has left the house she has carried 5-6 pair of clothes. She has also deposed that whenever Zareena Parveen (PW/5) used to visit her house they were talking about love affairs, but she has not informed to her sister-in-law and to her brother as she afraid from them. Zareena Parveen (PW/5) has also stated that she told her that Santosh intends to marry her and Chini @ Sudhanya will come to take her for marriage. This evidence clearly demonstrates that victim has voluntarily left the house of her brother and even she has nowhere deposed that the



accused have kidnapped the victim for compelling her to marriage, thus, the prosecution is unable to prove the offence of kidnapping for compelling her to marriage beyond reasonable doubt.

17. Since the prosecution is unable to prove beyond reasonable doubt that the victim was minor on the date of incident and also unable to prove beyond reasonable doubt that the victim was kidnapped by the accused for compelling her to marriage, therefore, the judgment passed by the learned trial Court convicting the accused for commission of offence under Sections 363, 366, 363/34 and 366/34 of IPC is liable to be set aside accordingly it is set aside by granting benefit of doubt to the accused.
18. Consequentially the accused are acquitted from the offence under Sections 363, 366, 363/34 and 366/34 of IPC for which they have been convicted by granting benefit of doubt. It is reported that the accused are on bail, their bail bond shall remain operative for six months as per Section 437-A Cr.P.C.(484 of the Bhartiya Nagrik Suraksha Sanhita, 2023).

**Sd/-
(Narendra Kumar Vyas)
Judge**