



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR  
CRA No. 973 of 2012

- Jagsen

---- Appellant

**Versus**

- State Of Chhattisgarh Through The Ps Darima, Distt. Surguja, Chhattisgarh

--- Respondent

**WITH**

CRA No. 1130 of 2012

1. Bholaram

2. Ramkumar

--- Appellants

**Versus**

- State Of Chhattisgarh Through The PS Darima, Distt. Surguja C.G.

---Respondent

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For Appellants : Shri Hariom Rai, Advocate on behalf  
of Mr. Jitendra Shrivastava, Advocate  
For Respondent/State : Shri Animesh Tiwari, Dy. A.G.

**Hon'ble Shri Sanjay K. Agrawal and**  
**Hon'ble Shri Sachin Singh Rajput, JJ**

**Judgment On Board**  
**(08.09.2022)**

**Sanjay K. Agrawal, J.**

1. Since both these appeals arise out of the same judgment dated 18.10.2012 passed by the Special Judge, Surguja (Ambikapur) in Special Case No.75/2008, they are being disposed of by this common judgment.
2. The accused/appellant Jagsen in Criminal Appeal No. 973 of 2012 has been convicted and sentenced as described hereunder:-



Conviction	Sentence
341 of the Indian Penal Code.	SI for 1 month and fine of Rs.500/-, in default of payment of fine to further undergo SI for 7 days.
363 of the Indian Penal Code.	RI for 3 years and fine of Rs.500/-, in default of payment of fine to further undergo RI for 1 month.
366 of the Indian Penal Code.	RI for 5 years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for 6 months.
354 of the Indian Penal Code.	RI for 2 years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for 3 months.

3. The accused/appellants Bhola Ram & Ramkumar in Criminal Appeal No. 1130 of 2012 have been convicted and sentenced as described hereunder:-

Conviction	Sentence
341 of the Indian Penal Code.	SI for 1 month and fine of Rs.500/-, in default of payment of fine to further undergo SI for 7 days.
363 of the Indian Penal Code.	RI for 3 years and fine of Rs.500/-, in default of payment of fine to further undergo RI for 1 month.
366 of the Indian Penal Code (no sentence), however, sentence imposed under Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.	Life imprisonment and fine of Rs.1000/-, in default of payment of fine to further undergo RI for 6 months.
354 of the Indian Penal Code (no sentence), however, sentence imposed under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.	RI for 2 years and fine of Rs.1000/-, in default of payment of fine to further undergo RI for 3 months.

4. Case put-forth by the prosecution in brief is that on 01.04.2008 when the victim/complainant (PW-3) - then studying in class 9 was going to Kalyanpur along with her friend Santoshi Paikra (PW-2) on bicycle to write her exams, all the accused/appellants stopped her on the way and knowing her to be the member of scheduled tribe took her



towards a rivulet and started pressing her hands and breasts. It is alleged that when she raised hue and cry, the accused/appellants abused her filthily and also threatened her of being killed if she did not allow them to do bad work. In the meanwhile, Trilochan (not examined) and Santoshi (PW-2) reached there and on seeing them the accused/appellants ran away. Victim/complainant narrated the entire incident to her family members and on 11.04.2008 she accompanied them to the Police Station where FIR (Ex.P-1) was lodged. Spot map was prepared, accused persons were arrested on 24.04.2008 and the caste certificate of the victim/complainant issued by Naib Tehsildar as well as the mark-sheet mentioning her date of birth as 01.04.1991 were obtained. After completion of investigation, charge-sheet was filed against the appellants under Sections 354, 341, 294, 506-B, 363, 366-A, 34 IPC. Against accused/appellants Bholaram and Ramkumar the charge under Sections 341, 363 IPC, 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short the "Special Act") in the alternative under Section 366 IPC, Section 3(1)(xi) of the Special Act, in the alternative u/s 354 IPC, under sections 294 and 506 (Part-II) IPC followed by framing of charge under the same Section. Against accused/appellant Jagsen the charge u/s 341, 363, 366, 354, 294 and 506 (Part-II) IPC was framed. The appellants however abjured the guilt and pleaded for trial.

5. So as to prove the involvement of the accused/appellants in the crime in question, prosecution has examined as many as 05 witnesses. Statements of the accused/appellants under Section 313 Cr.PC were also recorded in which they pleaded their innocence and false implication in the case. Accused/appellant Ramkumar has stated in his statement recorded under Section 313 CrPC that there was love affair between him and the victim/complainant and that as the discussion for their marriage came to the notice of her family members tension between the families



prevailed and ultimately father of the victim/complainant got him arrested. One defence witness namely Bharan Ram Paikra (DW-1) has also been examined in support of the case of accused/appellant Ramkumar. This witness has stated that father of accused/appellant Ramkumar had told him that the victim/complainant and accused Ramkumar wanted to marry. According to him, as accused Ramkumar belonged to other caste, father of the victim/complainant did not want his daughter to marry him.

6. After hearing the parties and going through the material available on record including the evidence of the witnesses, learned Special Judge has convicted and sentenced the accused/appellants as described in preceding paragraphs of this judgment. Hence these appeals.

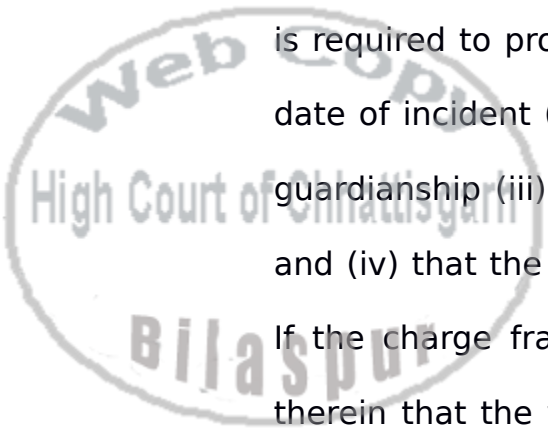
7. Learned counsel for the appellants submits that the offence under Section 363 IPC is not made out against the accused/appellants as in the charge framed it is not mentioned that the victim/complainant was below 18 years of age at the time of incident which is a *sine qua non* to hold the accused guilty under this Section. He further submits that merely on the basis of sole testimony of the victim/complainant (PW-3), it would not be safe to convict the accused/appellants under Section 366 IPC. He submits that there is no evidence to show that the accused/appellants kidnapped the victim/complainant with an intent to force or seduce her to illicit intercourse, and being so, the offence under Section 366 IPC is also not made out. According to the counsel for the appellants, in view of the decision of the Apex Court in the matter of ***Patan Jaman Vali v. The State of Andhra Pradesh*** reported in **2021 SCC OnLine SC 343**, the offence under Section 3(2)(v) of the special Act is also not made out. He further submits that the ingredients of the offence under Section 354 IPC read with section 3 (1)(xi) of the Special Act are also not attracted to the case in hand and therefore, the appeal deserves to be allowed.



8. On the other hand, learned counsel appearing for the State supports the judgment impugned and submits that the findings recorded by the Special Judge holding the accused/appellants guilty as described here-in-above being based on proper appreciation of the evidence on record are fully justified and do not call for any interference in these appeals.

9. Heard counsel for the parties at length and went through the evidence on record with utmost care and caution.

10. Though charge under Section 363 IPC has been framed against the appellants, there is no mention in it that on the date of incident the victim/complainant was below 18 years of age. To establish the charge of kidnapping as per the requirement of Section 361 IPC, the prosecution is required to prove (i) that the girl was below 18 years of age on the date of incident (ii) that the girl kidnapped was in the keeping of lawful guardianship (iii) that the accused enticed the girl out of such keeping, and (iv) that the accused did so without the consent of lawful guardian. If the charge framed by the Special Court is seen, it is not reflected therein that the victim girl was below 18 years of age. Prosecution has not brought any oral or documentary evidence on record to show that on the date of incident the age of the victim was below 18 years. The record however shows that the incident took place on 01.04.2008, the victim was examined before the trial Court on 25.09.2008 where her status has been shown as married. Though her date of birth has been shown as 01.04.1991 yet in the absence of any evidence on record, it would be unsafe for this Court to hold her as minor on the date of incident particularly when there is no mention of her age in the charge to be below 18 years. It was for the prosecution to plead and prove that the victim girl was under 18 years of age on the date of incident which is a *sine qua non* to convict the appellant for the offence under Section 363 IPC because unless it is so proved, no case of kidnapping is made out.





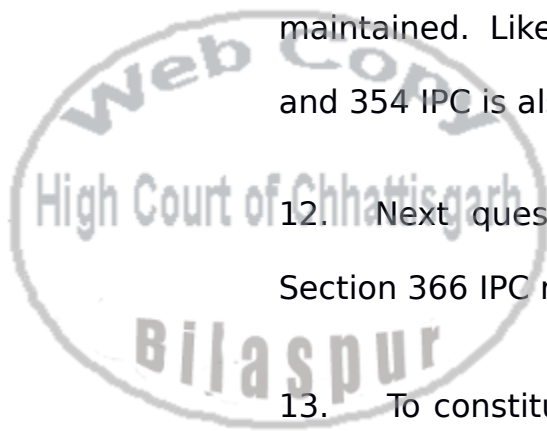
Prosecution could have proved the age of the victim in accordance with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 but it has miserably failed in doing so.

11. However, it is clearly established from the statements of Santoshi Paikra (PW-2) and the victim (PW-3) that the appellants wrongfully confined the victim, touched her private part, pressed her breasts with an intent to outrage her modesty and thus committed the offence punishable under Sections 341 and 354 IPC read with Section 3 (1) (xi) of the Special Act. In this view of the matter, the conviction of the appellants under Section 363 IPC is set aside. Conviction of accused/appellants Bholaram and Ramkumar under Sections 341 and 354 IPC read with Section 3 (1) (xi) of the Special Act is hereby maintained. Likewise, conviction of accused/appellant Jagsen u/s 341 and 354 IPC is also maintained.

12. Next question to be decided is whether the conviction under Section 366 IPC read with 3 (2)(v) of the Special Act is justified or not?

13. To constitute an offence under Section 366 IPC it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled her by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. Since the offence of kidnapping has not been proved by the prosecution and for that conviction of the accused/appellants under Section 363 IPC has already been set aside in the preceding paragraphs, their conviction under Section 366 IPC cannot be sustained and therefore it is also set aside.

14. Another question to be decided is whether the conviction of





appellants Bholaram and Ramkumar under Section 3 (2)(v) of the Special Act is justified or not?

15. Section 3(2)(v) of the SC and ST (Prevention of Atrocities) Act, 1989 prior to its amendment w.e.f 26.01.2016 by SC and ST Act (Prevention of Atrocities) Act, 2015, stood as under:

**'3. Punishment for offences of atrocities-**

(1) xxx xxx xxx

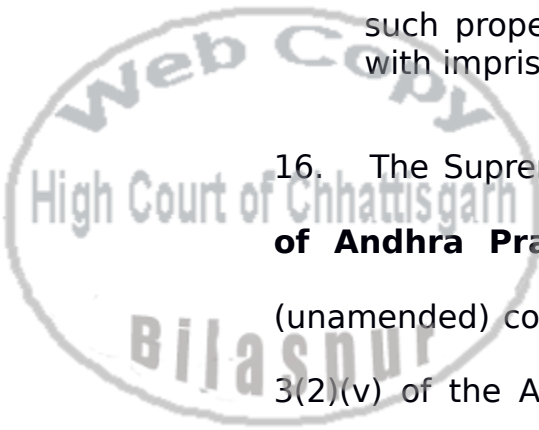
(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(I) to (iv) xxx xxx xxx

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;"

16. The Supreme Court in the matter of **Patan Jaman Vali v. State of Andhra Pradesh** noticing Section 3(2) (v) of the Act of 1989 (unamended) considered the issue of proving the offence under Section 3(2)(v) of the Act of 1989 against a person on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member and held that it is to be established by the prosecution on the basis of evidence at the trial and held as under:-

"58. We agree with the Sessions Judge that the prosecution's case would not fail merely because PW1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman. However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW2. While it would be reasonable to presume that the accused knew the caste of PW2 since village communities are tightly knit and the accused was also an acquaintance of PW2's family, the knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of Section 3(2)(v) as it stood at the time when the offence in the present case was committed. As we have discussed above, due to the intersectional nature of oppression



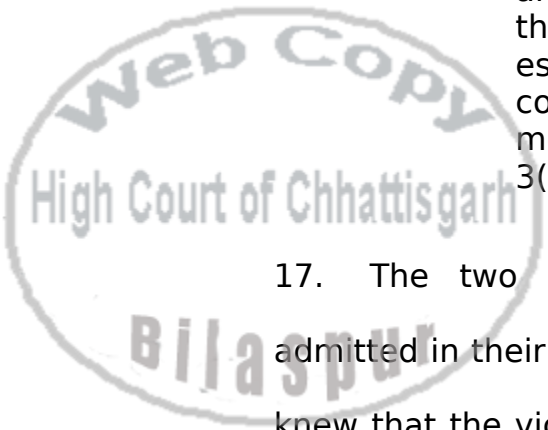


PW2 faces, it becomes difficult to establish what led to the commission of the offence - whether it was her caste, gender or disability. This highlights the limitation of a provision where causation of a wrongful act arises from a single ground or what we refer to as the single axis model.

59. It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2)(v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction.

61. However, since Section 3(2)(v) was amended and Clause (c) of Section 8 was inserted by Act 1 of 2016 with effect from 26 January 2016 these amendments would not be applicable to the case at hand. The offence in the present case has taken place before the amendment, on 31 March 2011. Therefore, we hold that the evidence in the present case does not establish that the offence in the present case was committed on the ground that such person is a member of a SC or ST. The conviction under Section 3(2)(v) would consequently have to be set aside."

17. The two appellants namely Bholaram and Ramkumar have admitted in their statements recorded under Section 313 CrPC that they knew that the victim was a member of Scheduled Tribe community and since the offence was committed on 01.04.2008 i.e. prior to the amendment inserted on 26.01.2016 it was entirely for the prosecution to establish and prove that the offence was committed just because the victim was a member of Scheduled Tribe community. In view of the evidence adduced by the prosecution, it is apparent that it has miserably failed to prove that the appellants Bholaram and Ramkumar committed the offence under Sections 341 and 354 IPC on the basis of caste identity of the victim. There is no separate evidence led on behalf of the prosecution to establish that the appellants committed the offence on the basis of caste identity of the victim. While it can be presumed that the appellants knew that the victim belonged to scheduled tribe







community as the victim and the accused persons were the residents of the same village, but mere knowledge of the same cannot be said to be the basis of conviction for the offence and it had to be proved by the prosecution by leading separate evidence as held by their Lordships of the Supreme Court in the matter of **Patan Jaman Vali** (supra). In absence of any such independent evidence led by the prosecution establishing that the appellants wrongfully confined the victim and outraged her modesty only on the ground that she belonged to Scheduled Tribe community, we are of the considered opinion that learned Trial Court was unjustified in convicting the appellants Bholaram and Ramkumar for the charge under Section 3 (2) (v) of the Special Act. Accordingly, their conviction for offence punishable under Section 3 (2) (v) of the Special Act is hereby set aside.

18. As far as sentence part is concerned, the sentence of RI for one month and fine of Rs. 500/- each awarded by the Trial Court under Section 341 IPC is hereby maintained. As regards sentence of RI for two years with fine of Rs. 1000/- each awarded under Section 354 IPC read with Section 3 (I) (xi) of the Special Act, it is stated at bar that accused Bholaram and Ramkumar remained in jail for a total period of 239 days which comes to 07 months and 29 days whereas accused Jagsen remained in jail for 189 days which comes to more than 06 months, and considering the fact that nothing has been pointed out by the prosecution that they misused the liberty granted to them by way of suspension of their sentence and releasing them on bail or that their conduct during that period was in any manner detrimental to the society, we are of the considered opinion that the sentence imposed on them under this Section can be reduced to the period already undergone. Order accordingly.

19. In sum and substance, conviction of accused Ramkumar and



Bholaram under Sections 363 and 366 IPC read with 3(2)(v) of the Special Act is set aside and they are acquitted of the said charges. Their conviction under Sections 341 and 354 IPC read with section 3 (1)(xi) of the Special Act is maintained. Likewise, conviction of accused/appellant Jagsen u/s 363 and 366 IPC is set aside and he is acquitted of the charge under these sections. His conviction u/s 341 and 354 IPC is however maintained. Sentence imposed on them is however reduced to the period already undergone as computed above. Since the appellants are already on bail, their bail bonds stand discharged.

20. Appeals are thus allowed in part.

Sd/-  
**(Sanjay K. Agrawal)**  
Judge

Sd/-  
**(Sachin Singh Rajput)**  
Judge

