



prosecutrix. According to the prosecution, the prosecutrix was aged 14 years 4 months at that time. Since the prosecutrix was missing, her father (PW-2) lodged a First Information Report (FIR) with the police on 13<sup>th</sup> February 1994 with Patwari (PW-7). During investigation, the investigating agency found the appellant as well as the prosecutrix residing together in Survey Colony in Dehradun. From there the appellant herein was taken into custody, whereas the prosecutrix was given in custody to her father.

**3.** In this background, the charge-sheet was filed against the appellant herein for the offences punishable under Sections 376, 366 and 363 of the Indian Penal Code, 1860 (for short, 'IPC') as well as the other two accused, namely, Jot Singh and Gabbar Singh for offences punishable under Sections 366 and 363 of the IPC.

**4.** The trial court acquitted the other two accused and only convicted the appellant for offences punishable under Sections 376, 363 and 366 of the IPC and sentenced him for three years of rigorous imprisonment and a fine of Rs.1,000/- under Section 363 of IPC, five years of rigorous imprisonment and a fine of Rs.2,000/- under Section 366 of

IPC and seven years rigorous imprisonment and a fine of Rs.4,000/- under Section 376 of IPC.

**5.** Being aggrieved thereby, the appellant preferred an appeal before the High Court. The learned Single Judge of the High Court though acquitted the appellant herein for the offence punishable under Section 376 IPC but upheld the conviction for the offences punishable under Sections 363 and 366 of the IPC. The High Court, however, reduced the sentence to two years of rigorous imprisonment under Section 363 IPC and three years of rigorous imprisonment under Section 366 IPC. Being aggrieved thereby, the present appeal by way of special leave.

**6.** We have heard Shri Sachin Patil, learned counsel for the appellant and Ms. Anubha Dhulia, learned counsel appearing for the respondent/State of Uttarakhand.

**7.** Shri Patil, learned counsel for the appellant, submits that on the basis of very same evidence, the learned Single Judge of the High Court has acquitted the appellant for offence punishable under Section 376 of IPC, however, on the testimony of prosecutrix and on a conjecture that the prosecutrix was below 18 years of age at the time of the

incident, the learned Single Judge of the High Court has maintained the conviction under Sections 363 and 366 of IPC. He further submits that from the evidence of the prosecutrix itself, it would be clear that the prosecutrix, on her own accord, had left the village along with the appellant, married with him at Dehradun before the Registrar's office and thereafter started living as husband and wife at Dehradun. He submits that this would be amply clear from the cross examination of the prosecutrix itself. He further submits that the FIR lodged by PW-2 was also after a period of seven days from the alleged abduction on 7<sup>th</sup> February 1994. Shri Patil, therefore, submits that the appeal deserves to be allowed.

**8.** Per contra, Ms. Dhulia, learned counsel appearing on behalf of the respondent/State submits that the learned Single Judge of the High Court has rightly convicted the appellant under Sections 363 and 366 of the IPC. She submits that the evidence of Medical Expert (PW-3) would show that the age of the prosecutrix was about 14 years at the time of the incident. It is, therefore, submitted that if the age of the prosecutrix is below 16 years, then the question of

consent would not arise at all. The learned counsel, therefore, submits that no interference is warranted in the judgment and order of the learned Single Judge of the High Court who has taken into consideration all the relevant aspects.

**9.** The present case would mainly turn on the evidence of the prosecutrix (PW-1). No doubt that in her examination-in-chief, the prosecutrix has stated that when she was going to give fodder to her animals and to purchase salt from village Darmigad, all the three accused came behind her and inserted a cloth in her mouth so that she does not raise an alarm. Thereafter, she was tied with ropes and taken to village Fahnar which is 16-17 kms away from village Darmigad. The prosecutrix stated that she was raped by the appellant herein on the instigation of the other two accused.

**10.** However, in her examination-in-chief, the prosecutrix admits that though her father (Kedar Singh) had information that she had been kidnapped, he reached the village of Jot Singh the next day requesting him to return his daughter. The prosecutrix further admits that efforts were made to settle the matter in the village panchayat and for this

purpose 2-3 village panchayats were held at villages Koti and Fahnar. From her testimony, it is further clear that she travelled all the way to Dehradun from the village Luni, which is 14-15 kms away from Fahnar, in a bus. Admittedly, in the said bus there were at that time 15-16 passengers. She further admitted that she did not make any effort to raise any alarm when she was travelling in the bus. A suggestion was given to her that she was taken to Courts in Dehradun and was asked to sign various documents which were pertaining to her marriage. To these suggestions, she admitted that she went to the Court and she was asked to sign various forms.

**11.** A perusal of testimony of the prosecutrix itself would reveal that she had gone on her own accord with the appellant herein. Therefore, the defence of the appellant herein that he had married the prosecutrix and not only that but also that the marriage was certified before the competent authority at Dehradun and thereafter they were living as husband and wife at Dehradun is a plausible defence.

**12.** It is further pertinent to note that the learned Single Judge of the High Court has himself disbelieved the

testimony of prosecutrix (PW-1) with regard to the appellant committing rape on her. It was found by the learned Single Judge that there was absolutely no injury on the body of the prosecutrix and that she had never made any attempt to resist or raise a cry. The learned Single Judge further goes on to observe that in fact she was with the appellant for about 20 days; travelling to different places along with him before reaching the final destination at Dehradun. The learned Single Judge has, therefore, rightly acquitted the appellant for the offence punishable under Section 376 IPC.

**13.** Insofar as the age of the prosecutrix is concerned, there are two contradictory opinions given by two medical experts.

**14.** Doctor Renuka Naithani (PW-3) states that according to the X-ray reports, the age of the prosecutrix was around 14 years, however, Chief Medical Officer Dehradun, Dr. Raja Ram (DW-2) has opined that the age of the prosecutrix was around 18 years.

**15.** In view of the two conflicting medical opinions, we are of the opinion that the benefit ought to have been given to the appellant-accused.

**16.** Even if the finding of the learned Single Judge of the

High Court that the prosecutrix was between 16 to 18 years of age is to be accepted, in our view, the offence under Sections 363 and 366 IPC would still not be made out.

**17.** This Court in the case of **S. Vardarajan v. State of Madras<sup>1</sup>** had an occasion to consider almost similar facts that arise for consideration in the present case. This Court has observed thus:

“7. ....It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what we have to find out is whether the part played by the appellant amounts to “taking” out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law “taking”. There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no

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<sup>1</sup> 1964 SCC OnLine SC 36



suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.....”

**18.** It is thus clear that the prosecutrix, who according to the learned Single Judge of the High Court, was between 16 to 18 years of age was very much in the age of understanding as to what was right and wrong for her.

**19.** From the evidence of the prosecutrix itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife at Dehradun.

**20.** In that view of the matter, we find that the learned Single Judge of the High Court was not justified in upholding the conviction for the offences punishable under Sections 363 and 366 of the IPC.

**21.** In the result, for the foregoing reasons, the appeal is allowed. The judgment and order passed by the High Court of Uttarakhand dated 8<sup>th</sup> March 2013 in Criminal Appeal No.140 of 2003 is quashed and set aside. The appellant is acquitted of the charges he was charged with. The appellant is already on bail, his bail bonds shall stand discharged.

**22.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(B.R. GAVAI)**

.....**J.**  
**(K. VINOD CHANDRAN)**

**NEW DELHI;**  
**FEBRUARY 06, 2025.**