



2025:CGHC:45637

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 288 of 2016**

Pankaj Ram S/o Jeetan Ram Aged About 20 Years R/o Village Aajdha, P.S. Aastha, District Jashpur, Chhattisgarh., Chhattisgarh

**... Appellant****versus**

State Of Chhattisgarh Through Station House Officer, P.S. Jashpur, District Jashpur, Chhattisgarh., Chhattisgarh

**Respondent(s)****(Cause-title taken from Case Information System)**

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For Appellant : Mr. Khemchand Prajapati, Advocate on behalf of Mr. Sanjeev Kumar Sahu, Advocates

For Respondent : Mr. Shailendra Sharma, PL

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**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Bibhu Datta Guru, Judge****08/09/2025**

This appeal is directed against the conviction and sentence imposed on the appellant under Section 368 of the Indian Penal Code, as recorded in the judgment dated 09/02/2016 by the learned Additional Sessions Judge (FTC), District Jashpur (C.G.) in Sessions Trial No. 64/2015. By the impugned judgment of conviction and order of sentence, the appellant was sentenced to



undergo rigorous imprisonment for a period of three years and to pay a fine of ₹1000/-, with a default stipulation.

In the present case, there were two accused persons, out of them, one accused is juvenile and hence, he was tried separately by the Juvenile Justice Board. The said fact is evident from para 3 of the impugned judgment.

1. The prosecutrix (PW-10) appeared at the Police Station in Jashpur and lodged a report stating that on 20/04/2015, at approximately 7:30 PM, she had attended a 'Chhatti' ceremony at the residence of one Fantus along with her friends. She remained at the venue until about 8:30 PM, after which she expressed her desire to return home. While her friend suggested waiting for some time, she decided to proceed alone. On her way, near a Mahua tree, she was intercepted by the JCL, who forcibly took hold of her hand, dragged her to a spot beneath a mango tree, and, despite her resistance, committed rape. Subsequently, the JCL took her to the residence of his friend, Pankaj (the appellant), where she was confined overnight.

The following morning, 21/04/2015, at around 7:30 AM, the prosecutrix awoke to find the door locked from outside. Around 10:30 AM, the JCL and the appellant returned but, upon realizing that the prosecutrix's father was approaching, they again locked the house and absconded. At approximately 12:30 PM, her aunt (PW-4), her mother (PW-5), and other family members arrived, rescued her, and took her to the police station. Initially, out of fear, she did not disclose the incident,



and the police handed her over to Childline, Jashpur, where she narrated the occurrence. She was subsequently sent to Bal Kalyan Grih, and upon further inquiry, disclosed the assault perpetrated by the JCL.

Acting on her statement, the Jashpur Police registered Crime No. 108/15 under Sections 342 and 376 IPC, along with provisions of the POCSO Act, against the JCL. The investigation involved obtaining the father's consent, conducting a medical examination of the prosecutrix, recording her statement under Section 164 CrPC, preparing site maps, and verifying her age from school records. The JCL was arrested, and it was discovered that he had concealed the prosecutrix at the appellant's residence following the assault. Accordingly, the appellant was also taken into custody under Section 368 IPC.

On being charged under Section 368 IPC, the appellant denied the allegations, asserting that he had been falsely implicated. The prosecution presented 18 witnesses to substantiate its case, and the appellant's statement under Section 313 CrPC was recorded, reiterating his plea of innocence.

After careful appraisal of the oral and documentary evidence, the trial Court found the appellant guilty of the offence and imposed the sentence as outlined above. Dissatisfied with the judgment and order of conviction and sentence, the appellant has approached this Court by way of the present appeal.

2. (a) Learned counsel for the appellant vehemently contended that the appellant has been falsely implicated in the present case. He would



submit that in fact, the main allegations are against JCL and except the allegation for offence under Section 368 of the IPC, no specific role has been attributed to the appellant. It was argued that the appellant had no knowledge that the prosecutrix had been brought to his residence following an alleged kidnapping. Further, reliance was placed on the prosecutrix's own statement, which revealed that she was in a love affair with the JCL. According to counsel, this circumstance indicates that the appellant could not have been aware that she was brought to his house under circumstances constituting a kidnapping.

(b) Learned counsel further submits that the statements of the prosecution witnesses contain material contradictions and inconsistencies, which go to the root of the case and cast serious doubt on the credibility of the prosecution's narrative. He would submit that the allegations of sexual assault are directed solely at the JCL, and there is no accusation of rape or sexual misconduct against the appellant. Moreover, no medical examination report (MLC) exists implicating the appellant in any sexual assault or active participation in the alleged offence. He would pray for acquittal of the appellant.

3. Conversely, learned State counsel supported the judgment of conviction and the sentence imposed by the trial Court, submitted that the prosecution has established the appellant's guilt beyond reasonable doubt through cogent and reliable evidence. As such, the trial Court rightly concluded that the appellant's actions attracted liability under Section 368 IPC, and therefore, the appeal ought to be dismissed.



4. I have heard learned counsel for the parties and perused the record with utmost circumspection.
5. The appellant stands convicted under Section 368 of the Indian Penal Code, and the only question for determination before this Court is whether the prosecution has successfully established, beyond reasonable doubt, that the appellant, with conscious knowledge of the prosecutrix having been kidnapped, wrongfully concealed or confined her within his premises, thereby incurring criminal liability under the provisions of Section 368 IPC.
6. Section 368 IPC, which delineates the scope of criminal responsibility in such circumstances, provides:

*"Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement."*

7. The prosecutrix (PW-10), in her examination-in-chief, deposed that she was acquainted with both the appellant, Pankaj, and the Juvenile in Conflict with Law (JCL). On 20.04.2015, she attended a 'Chhathi' ceremony at the residence of one Fantus in her village along with friends, remaining there until approximately 8:30 PM. After leaving the venue to return home, she was intercepted near a mango tree by the JCL,



who forcibly restrained her and committed sexual assault. Thereafter, the JCL transported her to the appellant's residence, where she remained confined overnight. On the following morning, both the JCL and the appellant left, having locked the house from outside. Around noon, the prosecutrix's mother and aunt, arrived, obtained the key from the appellant, unlocked the room, and recovered her. Subsequently, the village Sarpanch alerted the police, who escorted the prosecutrix to Jashpur Police Station. Initially, out of fear, she refrained from disclosing the incident, and the authorities referred her to Childline, which later facilitated her transfer to Bal Kalyan Grah. During her stay there, she narrated the events to the staff, and with her consent, the police arranged for a medical examination at the District Hospital, Jashpur, conducted by a female doctor.

During cross-examination, the prosecutrix admitted that the JCL resided with his uncle and aunt in Tangra Toli and that she had previously met him in the village. She further acknowledged that the JCL was present at the Chhathi ceremony, though she had not informed her mother of this fact. Additionally, she confirmed that she had left Fantus's residence with her friends to return home.

8. PW4 – Aunt of the Prosecutrix deposed that upon receiving information from her brother regarding the disappearance of the prosecutrix, she immediately joined him in the search. During this search, they met the JCL, who directed them to a rented house belonging to the appellant. The house was initially locked, but upon receiving a key from the



appellant, they were able to gain entry and discovered the prosecutrix inside. PW4 further testified that she later came to understand that the lock had been secured jointly by the appellant and the JCL. In her presence, the police conducted seizure proceedings, taking possession of the prosecutrix's knicker and a sealed packet from the hospital, for which her signatures were obtained. She stated that during the inquiry conducted by Childline, the prosecutrix disclosed that the JCL had forcibly dragged her under a mango tree on 21.04.2015 and committed rape. PW4 clarified that she could not personally identify the appellant as having confined the prosecutrix and had only mentioned his name as the individual providing the key on the instructions of the JCL. She refuted all suggestions that no seizure proceedings occurred in her presence or that she had provided false testimony to implicate the appellant.

9. PW5 – Mother of the Prosecutrix deposed that she was aware of the JCL and confirmed that the prosecutrix was her daughter. On the night of 20–21 April, the prosecutrix had attended a function at Fantus's house in the village but did not return home. Despite searching throughout the night and the following morning, she could not locate her daughter. PW5's husband informed her sister-in-law (PW4), who joined them in the search. They discovered that the JCL was also absent from his residence. Upon questioning near Jurugum barrier, the JCL revealed that the prosecutrix was confined in a room within a specific house, which he identified. Upon unlocking the house with a key, they found the



prosecutrix asleep and brought her home. PW5 further testified that the village Sarpanch was informed, who contacted the police. As she initially refrained from disclosing the incident to Police, Childline officials were called, and upon questioning, the prosecutrix stated that the JCL had molested her, committed wrongful acts, and confined her in the house of the appellant. PW5 confirmed that the location from which the prosecutrix was recovered was the same as indicated by the JCL.

During cross-examination, PW5 acknowledged that the JCL originally hailed from Karadari Tigra but resided with his uncle and aunt in Tangartoli. She admitted prior disputes existed between her family and the JCL's relatives before the incident. She denied any rumors regarding her daughter's meetings with the JCL. PW5 clarified that she had not attended the function at Fantus's house as she was at work and mentioned that during the search, some girls informed them that the prosecutrix had gone with the JCL. She confirmed that the house where the prosecutrix was found had other occupants and neighbors nearby. PW5 denied suggestions that the key had been provided by someone else or that she had falsely implicated the JCL. She also admitted that she could not testify regarding the statements made by the prosecutrix to Childline officials, as she was not present at the time. Furthermore, she clarified that neither she nor her husband directly contacted the police; the first information was provided by a villager. She reiterated that the JCL had indicated the location of the key, which was then used to open



the room and recover the prosecutrix, denying any intent to falsely implicate the JCL.

10. Father (PW12) of the Prosecutrix, in his examination-in-chief, has deposed that he knows the Prosecutrix, who is his daughter, aged about 15 years. On the night of 21st April 2015, the Prosecutrix had gone with her friends to attend a ceremony at the house of Suraj in the village. Around 7 p.m., his wife asked him to bring their daughter home. When he went to Suraj's house, he was informed that the Prosecutrix was not there. He searched for her in the village and nearby areas throughout the night but could not find her. The next morning, around 9:30 a.m., when the Prosecutrix was still not found, he called his sister (PW4) and informed her. Around 10 a.m., she came to his house, and together they searched for the Prosecutrix but failed. His wife (PW-5) and his sister (PW4) went to inquire at the house of the JCL, where they were told that the JCL too had not been at home the entire night. The witness asked a boy of the village about the JCL, and said boy pointed him out on the road. Subsequently, PW4 caught hold of the JCL and questioned him about the Prosecutrix. The JCL told them that the Prosecutrix was confined in the appellant's house. Thereafter, PW4 (his sister) and the wife (PW5) of the witness went to the appellant's house, but it was locked since the appellant had gone for a bath. They waited until he returned, and when he came back, PW4 asked for the key. The appellant handed over the key, and upon opening the lock, the Prosecutrix was



found inside the house. PW-4 and PW-5 then brought the Prosecutrix home.

The witness informed the village Sarpanch about the incident, who, in turn, informed the police. The police came to the house and took the Prosecutrix to the police station. The witness stated that he could not question the Prosecutrix at that time. The Prosecutrix was kept in Childline for three days, where, during inquiry, she disclosed that the JCL had raped her.

During cross-examination, the witness admitted that the JCL resided with his uncle and aunt in the village, though originally from another village. He admitted that his family had disputes with the uncle and aunt of the JCL. He denied the suggestion that there were rumours about his daughter and the JCL meeting earlier. He also denied that he or his wife had prior knowledge of any such meetings. He denied that he had met the Prosecutrix's friends on the night of the ceremony. He further denied that he had ever warned the JCL not to meet his daughter prior to the incident. He admitted that the house of the JCL's uncle was about 200 feet from his own house. He also admitted that he did not personally go to the appellant's house in the morning because his sister PW4 asked him not to. He confirmed that PW4 told him the Prosecutrix had been confined by the JCL in the appellant's room. He clarified that his daughter also told him the same fact later. The witness denied the suggestion that the key had been provided by the appellant's sister instead of the appellant himself. He admitted that he could not explain



why some details he mentioned were not recorded in his police statement. He reiterated that it was the JCL who informed them that the Prosecutrix was inside the appellant's house and that upon obtaining the key from the appellant, the Prosecutrix was indeed recovered from there. He denied the suggestion that he was deliberately implicating the appellant falsely. The witness stated that he has two children, of whom the Prosecutrix is the elder. He admitted that the first information to the police was given by Rajkumar, who is also the Sarpanch of the village.

11. The appellant has been convicted under Section 368 of the Indian Penal Code, which punishes anyone who knowingly helps to hide or confine a person who has been kidnapped or abducted. To prove this offense, two things are necessary: first, that the accused knew the person was kidnapped or abducted and second, that the accused actively helped to hide or confine that person. The prosecution must prove both these points beyond a reasonable doubt.
12. The prosecution's case relies mainly on the statements of the victim (PW10), her aunt (PW4), her mother (PW5), and her father (PW12). The victim said that on the night of 20–21 April 2015, the juvenile offender (JCL) stopped her near a mango tree and sexually assaulted her, then took her to the appellant's house and kept her there overnight. She also said that the appellant gave the house key to her aunt and mother the next morning, allowing her to be rescued. However, during cross-examination, the victim admitted she could not personally identify the appellant as the person who confined her. She also admitted that she



knew the JCL before and had met him at the village function that evening, which she had not told her mother. These points weaken her claim that the appellant actively helped in her confinement.

13. PW4 and PW5 corroborated that the prosecutrix was recovered from the appellant's house using the key, yet they consistently stressed that it was the JCL who disclosed the location of the victim. PW4 explicitly clarified that she mentioned the appellant's name solely as the custodian of the key, as informed by the JCL. Neither witness could point to any conduct by the appellant demonstrating knowledge of the prosecutrix's kidnapping or forcible confinement. Furthermore, both witnesses confirmed that the house had other occupants in adjoining sections and was situated in a neighborhood with nearby residences, which undermines any inference of deliberate concealment by the appellant. From the cross-examination of mother of victim (PW-5) it is manifest that they collected the key of the house of appellant from the house of one Sandeep. Thus, it can be seen that the said key has not been recovered from the exclusive possession of the appellant.
14. PW12, the prosecutrix's father, verified the sequence of events, including the recovery of the victim facilitated by PW4 and PW5, and affirmed that the JCL directed them to the location of the key. He acknowledged that he did not personally witness any act of confinement by the appellant and did not go to the appellant's residence on the morning in question at the instruction of PW4. He also disclosed the existence of prior familial disputes with the JCL's relatives, a factor potentially



affecting the perception of credibility. PW12 categorically denied any intention to falsely implicate the appellant and confirmed that the initial information to the police had been relayed by a village resident and the Sarpanch, rather than by him or his family.

15. Looking at all the evidence, it is clear that the juvenile (JCL) was the main person responsible for assaulting, kidnapping, and confining the victim. The appellant's alleged involvement was only giving the key of the room. There is no direct evidence showing that the appellant knew about the crime while it was happening. There is also no independent proof that he had the intention to help the crime. Simply relying on the JCL's statements to accuse the appellant is not enough, especially without other evidence showing that the appellant knowingly hid the victim.
16. From bare perusal of the material available on record, it is evident that the evidence adduced by the prosecution and particularly the statement of the prosecutrix shows that the act of actual commission of rape and kidnapping, were completed by the JCL himself. The appellant herein had only rendered help of providing a room, but there is nothing on record, including the statement of the prosecutrix, to show that the JCL ever informed the appellant about the fact regarding the prosecutrix being kidnapped and brought to his house.
17. The Apex Court in the matter of *Saroj Kumar v. State of U.P., (1973) 3 SCC 669* has held at para 10 as under:



*“10. To constitute an offence under Section 368, it is necessary that the prosecution must establish the following ingredients:*

- (1) *The Person in question has been kidnapped.*
- (2) *The accused knew that the said person had been kidnapped.*
- (3) *The accused having such knowledge, wrongfully conceals or confines the person concerned.*

18. Further, the Supreme Court in the matter of ***Om Prakash v. State of Haryana, (2011) 14 SCC 309*** has held at para 30 & 31 that:

*“30. In **Saroj Kumari v. State of U.P.**, this Court while explaining the constituents of an offence under Section 368 IPC clearly held that when the person in question has been kidnapped, the accused knew that the said person had been kidnapped and the accused having such knowledge, wrongfully conceals or confines the person concerned then the ingredients of Section 368 IPC are said to be satisfied.*

*31. The prosecution evidence and particularly the statement of the prosecutrix shows that the act of kidnapping with the intention to rape and actual commission of rape of the prosecutrix were completed by Jai Prakash bhimself. The appellant had rendered the help of providing a room but there is nothing on the record, including the statement of the prosecutrix, to show that she overheard Jai Prakash telling the appellant that he had kidnapped her and/or that the appellant had any knowledge of the fact that she had been kidnapped. The possibility of the appellant being informed by Jai Prakash that she had come of her own will and had travelled a long distance of 15-20 km without protest does not appear to be unreasonable. As noticed, according to the prosecutrix, she was under threat but the prosecution was*



*expected to produce evidence to show that the factum of kidnapping as well as intent to commit a rape was known to the appellant either directly or at least by circumstantial evidence”*

19. Under Section 368 IPC, the law requires that the accused must have clearly known that the person was kidnapped or abducted and must have intentionally helped hide or confine them. Simply doing something like giving access to a room, without knowing about the illegal detention, does not meet this legal requirement. Both the act and the intention must be proven. Here, the evidence shows the JCL carried out the kidnapping, assault, and confinement, and the appellant did not know or intend anything criminal. Holding him responsible under Section 368 IPC in these circumstances would be wrong, because the law does not punish someone for merely being present or helping unintentionally. This rule protects people from unfair criminal liability.
20. Careful examination of the evidence shows that the appellant only gave the key to the room. There is no direct evidence that he knew the victim was kidnapped or forcibly kept there. The statements of PW4, PW5, and PW12 clearly show that the JCL planned and carried out the assault and confinement, while the appellant just helped with access, without knowing anything illegal was happening. There is no proof that he had the necessary intention or took part in the crime under Section 368 IPC. Since the prosecution has not proven this beyond a reasonable doubt, the conviction cannot be maintained. Therefore, the appellant is **acquitted**



of the charge under Section 368 IPC, and the earlier judgment of conviction and sentence dated 11/01/2019 is **set aside**.

21. In view of the foregoing, the appeal is **allowed**. The impugned judgment is quashed, and the appellant is acquitted of all charges. The appellant remains on bail, and the surety and personal bonds furnished at the time of suspension of sentence shall continue in force for a period of six months in accordance with Section 481 of the BNSS.
22. The records of the trial court, along with a copy of this judgment, shall be transmitted forthwith to the trial court concerned for compliance and further action deemed necessary.

Sd/-

**(Bibhu Datta Guru)  
Judge**

**HEAD NOTE**

For conviction u/S 368 IPC, the prosecution is required to prove that the accused had knowledge that the person concerned had been kidnapped or abducted.