

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
CrI.A. No. 01 of 2022

1. Sri Binoy Das, son of Sri Tapan Das, resident of Subhasnagar, P.S.
East Agartala, District: West Tripura.

.....Appellant

-V E R S U S-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE [ACTING]

For Appellant(s)	:	Mr. S. S. Datta, Advocate.
For Respondent(s)	:	Mr. R. Datta, Public Prosecutor.
Whether fit for reporting	:	NO

Judgment and order dated 19th January, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. S. S. Datta, learned counsel appearing for the appellant. Also heard Mr. Ratan Datta, learned Public Prosecutor, appearing for the respondent-State.

[2] This criminal appeal has been filed under Section-374 of Cr. P.C. against the judgment dated 18.12.2021 passed by the learned Special Judge (POCSO), Agartala, West Tripura in connection with Case No. Special (POCSO) 43 of 2018 sentencing the appellant to suffer SI for 4 years for the offence punishable under Section-363 of IPC and also suffer SI for a term of 4 years and to pay a fine of Rs.10,000/-. Both the sentences shall concurrently.

[3] The present case was instituted upon a police report, as FIR No.2018/WEA/038 dated 27.04.2018. Briefly, the fact of the case is that one Pradip Sutradhar submitted a written petition to the effect that on 26.06.2018 at about 1900 to 1930 hours the minor daughter of the informant i.e. the victim (name withheld) was kidnapped by the

appellant, namely, Binoy Das @ Sunai with the help of other FIR named co-accuseds namely, Tapan Das, Smti. Ranu Das and Sanjit Ghosh when the minor victim girl went to a local shop to purchase some articles for her household. Hence, this appeal.

[4] On receipt of such written complaint submitted by the complainant, the officer in charge of East Agartala Women P.S. treated as FIR and registered the case vide No.2018/WEA/038 dated 27.04.2018 under Sections-363/34 of IPC and under Section-8 of the Protection of Children from Sexual Offences Act, 2012 [for short, POCSO Act].

[5] The police took up the investigation on the basis of the FIR as mentioned above and during the investigation police recorded the statement of the available witnesses visited the place of occurrence, prepared the hand sketch map of the place of occurrence. Finally, on completion of investigation, IO filed charge sheet vide East Agartala Women P.S. Case No.78 of 2018 dated 19.09.2018 under Sections-363/365/34 of IPC read with Section-8 of the POCSO Act against all the aforementioned FIR named accused persons for facing trial in the open Court of law for the ends of justice.

[6] During the trial, upon hearing submissions of parties and taking into consideration the record and documents submitted therewith, the Court of learned Sessions Judge (POCSO) Agartala, West Tripura framed charge against the accused persons under Sections-363/365/34 of IPC read with Section-8 of the POCSO Act along with Section-34 to which they pleaded not guilty and claimed to be tried.

[7] To substantiate the charge, the prosecution has adduced as many as 8(eight) witnesses and they were cross-examine3d by defense and thereafter the accused were examined under Sectin-313 Cr. P.C. and after hearing the argument of both sides, the learned Court below by his judgment dated 18.12.2021 sentencing the accused person, namely, Bijoy

Das @ Sunai as aforesaid. The other co-accused persons were acquitted on the charges framed under Sections-363/365/34 of IPC against them, due to insufficiency of evidence available on record and set at liberty.

[8] After hearing the arguments made by both sides and on perusal of the material evidence on record, the learned Court below delivered the judgment and order conviction and sentence dated 18.12.2021 against the accused-person. For the purpose of reference, the operative portion of the impugned judgment and order of conviction may be reproduced hereinbelow:

“In the result, accused namely, Sri Binoy Das @ Sunai is convicted on the charges framed under Section-363 of the IPC and alternatively under Section-8 of the POCSO Act. He is taken into custody and will be heard on question of sentence in due course of time of the day. The other co-accused persons namely Ranu Das, Tapan Das and Sanjit Ghosh are acquitted on the charges framed under Sections-363/365/34 of IPC against them, due to insufficiency of evidence available on record and set as liberty.”

[9] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[10] Mr. S. S. Datta learned counsel appearing for the appellant has submitted that the findings of the learned Court below are highly illegal, erroneous and perverse and against the evidence on record. The evidence on record do not construed any offences for which the appellant is convicted and as such the order of conviction and sentences is liable to be set aside.

[11] He has submitted that the prosecution has failed to produce any iota of evidence to prove that the victim girl was a minor, but it is held by the learned Court below that the victim did not exceed 14 years of age at the time of alleged incident. PW-1, the father of the victim girl has stated that he lodged this case against the accused namely, Binoy Das, Tapan Das, Sanjit Ghosh and Smti. Ranu Das. He further deposed

that on 26.04.2018 around 7/7.30 pm her victim daughter aged about 14 years went to the shop of Dilip Das of their locality for purchasing chips but did not return thereafter to the house. After returning home he came to know about the incident from his wife. Thereafter, he searched the victim at all probable places but could not trace her out.

[12] They suspected that the accused appellant did something wrong with their daughter. The witness further deposed that out of suspicion they went to the house of accused persons but, all were found absent. The witness continued to depose that however, Accused Smti Ranu Das was present in her house and when they asked about their daughter she abused them with filthy language. Subsequently, in the following morning he lodged a complaint in writing with the East Agartala Women P.S. and the said written complaint was prepared by his wife and he put the signature on the bottom of ejahar/complaint whereupon the witness duly identified his signature.

[13] Mr. Datta, learned counsel has contended that the father of the victim at the time of examination by the police in connection with this case did not narrate the fact to the police that he came to know about the missing of their daughter from his wife immediately after returning to the house and apart from this rest part of his cross-examination is consists of bare denial put by the learned counsel. It is clear from the deposition of PW-1 that the appellant had married the victim girl and they have resided as husband and wife.

[14] PW-2, the mother of the victim girl deposed before the learned Court below that the informant Pradip Sutradhar is her husband he lodged his case against the accused persons and she has also deposed similar to her husband i.e. PW-1. She further stated that after one year her daughter returned back to the house of accused person and the appellant namely, Binoy Das got her daughter married. Thereafter, the accused person had subjected her to torture and subsequently, she took her back

to her house. During cross-examination she has stated that she was examined by the police in connection with the case and deposed that she did not narrate the fact to the police that she came to know from the local people that their daughter had been taken by the accused Binoy. It is clear from her deposition that the appellant and her daughter was residing as husband and wife.

[15] PW-3, Sri Darpan Roy deposed before the learned Court that the informant is the husband of his younger sister and on 26.04.2018 at about 8/815 pm his sister informed him on telephone that her daughter was missing. He also deposed that on receiving such information immediately went to their house and searched the victim in all places. As part of their search, he accompanied his sister and her husband to the house of one Binoy Das. He also stated that they made queries about the victim but failed to get any information and after about one year the victim girl returned to the house of Binoy Das. But in the cross examination of PW-3 there is nothing but denials of his evidence.

[16] PW-6, Smti. Sima Biswas, officer-in-charge of East Agartala Women P.S. In her cross-examination she has stated that as per written complaint the alleged incident occurred on 26.04.2018 and the complaint was lodged on 27.04.2018 and the delay was not explained in the written complaint and the fact pertaining to lodging missing information leading to the entering in the GD was not mentioned in the charge-sheet.

[17] PW-7, Smti. Aparna Debnath, WSI has stated that the case was endorsed to her for investigation. She further deposed that as part of her investigation, she examined and recorded the statements of informant and his wife under Section-161 of Cr. PC. and she also examined and recorded the statement of Dilip Ranjan Das. Further, she has stated that thereafter the case was investigated by Sima Biswas as per the order of SP, West Tripura. In her cross she stated that she has not ascertained the

distance between the place of occurrence and BJP Party office. It has been stated that the statement of the witness namely Sri Dilip Ranjan Das so recorded, is not available in the police docket. She denied the fact that she had not examined the witness Dilip Ranjan Das or therefore his statement is not available in the police docket. She denied the fact that her investigation is perfunctory. It is clear that the IO did not record the statement of Sri Dilip Ranjan Das. The statement of the victim under Section-161 and 164(5) of Cr. P.C. has not been recorded in the present case.

[18] PW-8, the victim of this case has deposed that subsequently the appellant took her to Melaghar by a car in the house of the sister of his friend whereupon the appellant put vermilion and conch forcibly and married her. In her cross examination she deposed that she can only say that while filing his ejahar her father must have mentioned the fact about her kidnapping by the appellant and nothing else. When she was taken to Udaipur nothing has been stated to anyone. It is admitted fact that at the relevant point of time there were some people present inside the shop and she did not make any noise nor shouted for help. It is clear from her version that marriage was solemnized between them and they were living as husband and wife.

[19] The prosecution has miserably failed to prove their case beyond reasonable doubt. The allegations as leveled against the appellant are not only false but, vexatious. From the statements of PWs.1, 2, 3, 4 and 8, it is crystal clear that a marriage was held between the appellant and the victim girl and they have resided as husband and wife.

[20] The main objective of enacting these provisions is to maintain the personal liberty of citizens, protect children from being abducted for illegal and immoral purposes and preserve the rights of guardians and parents of custody of their children. The offence of kidnapping is punished under Section-363 of IPC. The word kidnapping

consists of two words: 'kid' means child and 'napping' means taking away or stealing. Thus, it means stealing a child from the parents or taking away the child forcefully or by inducement from the possession of the parents. To understand Section-363 it is necessary to understand the concept of kidnapping and its types under the Indian Penal Code, 1860. The article explains the provisions of kidnapping along with its punishment and the differences between abduction and kidnapping.

[21] Here, in this case the victim has herself uttered that at the relevant point of time when she was boarded with the appellant towards Udaipur from the shop, she never shouted for asked for any help. Subsequently, at Udaipur also she did not say anything to anyone of the family members or outsiders about her abduction. When there is no specific allegation or proof that she had been kidnapped by the appellant, Section-363 of IPC cannot be applied.

[22] Kidnap under Section-363 of IPC is not made out in view of the evidence of PW-6, the victim girl. Insofar as Section-8 of the POCSO Act, punishment under this section is not established as the author of the same who has issued the birth certificate was not examined even as per statement of PW-8, both were in relationship and they also married leading conjugal life. Since the parents intervene after few months the case has been registered and the action has been initiated in this matter. Since Section-8 of POCSO Act and Section-363 of IPC is not made out, convictions under these sections cannot be applied against the appellant herein.

[23] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The

discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[24] In view of above analysis and having regard to the evidences on record, this Court is of the view that the question of sentence is a matter of discretion and such discretion has to be exercised along with accepted judicial lines. To impose adequate punishment according to law is not only the duty of the Court, but it is social obligation clearly enjoined upon it keeping in mind not only the crime but also the criminal. There is also nothing in the record to suggest any previous crime and also there is nothing that the accused-appellant will be a danger to the society.

[25] In the backdrop of above analysis, this Court is of the view that the prosecution has failed to establish their projected case and consequently the instant appeal stands allowed and thus, the order of conviction and sentence dated 18.12.2021 passed by the learned Special Judge (POCSO), Agartala, West Tripura, in connection with case No. Special (POCSO) 43 of 2018, is hereby set aside and quashed. The convict-appellant is discharged from his bail bond and accordingly, his surety is also discharged. The appellant is acquitted from the charges leveled against him.

[26] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

CHIEF JUSTICE (ACTING)

A.Ghash