

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 52 of 2012
(Via Video Conference)

Mritunjoy Mondal.
-vs.-
The State of West Bengal

For the Petitioner : Mr. Sumanta Chakraborty

For the State : Mr. Imran Ali
Ms. Debjani Sahu

Heard on : 27.08.2021, 01.09.2021, 17.09.2021,
22.09.2021, 27.09.2021.

Judgment on : **08.10.2021.**

Tirthankar Ghosh, J:-

The present revisional application has been preferred against the judgment and order dated 28.02.2011 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad in Criminal Appeal No. 1/10, wherein the learned Court was pleased to dismiss the appeal and affirm the order of conviction and sentence passed by the learned Assistant Sessions Judge, Lalbagh, Murshidabad in Sessions Case

no. 81/2007 under Section 363/366 of the Indian Penal Code. The sentence which was imposed by the learned Assistant Sessions Judge, Lalbagh, Murshidabad by its judgment dated 27.05.2009 was as follows:

- (i) The accused Mritunjoy Mondal is sentenced to undergo R.I. for 7 years and to pay fine of Rs.3000/- i.d. to suffer more imprisonment for six months for the offences punishable under Section 363 of Indian Penal Code.
- (ii) R.I. for 7 years and to pay fine of Rs.3000/- i.d. to suffer more 6 months for the offence punishable under Section 366 of Indian Penal Code.

The genesis of the case was complaint lodged by one Banomali Mondal of village Char Doulatpur, P.O. Khamardiar under P.S. Islampore, Dist. Murshidabad with the Officer-in-charge Islampore P.S. to the effect that on 10.12.2006 at the night hours his daughter namely, Sundari Mondal aged about 14 years was enticed by Mritunjoy Mondal, with the purpose of marrying her. On the basis of such complaint dated 02.03.2007 Islampore police station case no. 25/07 dated 02.03.2007 under Section 363/366 of the Indian Penal Code was registered for investigation and after completion of investigation the investigating agency filed charge-sheet no. 24/07 dated 30.03.2007 under Section 363/366 of the Indian Penal Code before the learned A.C.J.M. Lalbagh on or about 09.04.07. The learned Magistrate was pleased to take cognizance of the offences and thereafter committed the case to the Court of Sessions and finally the case was transferred to the learned

Assistant Sessions Judge, Lalbagh Murshidabad for trial on or about 15.06.2007.

Records reflect that on or about 04.10.07 charge was framed against the present petitioner under Section 363/366 of the Indian Penal Code and the substance of the accusation of the said charge-sheet was read over and explained to the present petitioner who pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon 13 witnesses and number of documents which were marked as Exhibits. On the other hand defence examined one witnesses in support of its case and for rebutting the prosecution evidence. The witnesses who deposed on behalf of the prosecution are PW1, Banomali Mondal, complainant and father of the victim girl; PW2, Masadul Sarkar, who is the scribe of the letter of complaint; PW3, Arati Mondal, mother of the victim girl; PW4, Gour Chandra Mondal, relative of complainant/PW1; PW5, Upen Mondal, an independent witness; PW6, Prollad Mondal, also an independent witness; PW7, Dr. Bilas Mukhjerjee, Medical Officer who examined Mritunjoy Mondal; PW8, Sujit Kumar Bandyopadhyay, Judicial Magistrate who recorded the statement of the victim girl under Section 164 of the Code of Criminal Procedure; PW9, Gurupada Mondal, Medical Officer, who examined the victim girl for ascertaining her age; PW10, Dr. Ranjit Raychoudhury, Medical Officer, who examined the victim girl; .PW11, Sundari Mondal, victim girl; PW12, Kalidas Roychowdhury, Investigating Officer of this Case

and PW13, Modhusudhan Mondal, Head Teacher of Char Doulatpur F.P. School who produced the date of birth of the victim girl.

The documents which the prosecution relied upon are Ext.1 series, written complaint and signature thereon; Ext. 2, Medical Test Report of Mritunjoy Mondal; Ext.3, statement of the victim under Section 164 of the Code of Criminal Procedure; Ext.4 series X-ray report and X-ray plate, Ext.5, Medical Test report of victim girl; Ext.6, Formal FIR; Ext.7 series, sketch map with index; Ext.8, admission register of Char Doulatpur Primary School in respect of serial no. 27, regarding admission of Sundari Mondal in that School.

The witness which was tendered by the defence in support of its case was one Sova Mondal.

Mr. Sumanta Chakraborty, learned Advocate appearing for the petitioner contested the judgment delivered by both the Court below, firstly regarding the age of the victim girl, secondly, regarding the statement of the victim girl under Section 164 of the Code of Criminal Procedure, thirdly, regarding the applicability of Section 363 and Section 366 of the Indian Penal Code in respect of which charges were framed and the petitioner was held guilty and sentenced. Learned Advocate in order to substantiate his contention relied upon the following judgments: Ram Murti –Vs. – State of Haryana, AIR 1970 SC 1029; Govinda Kadtuji Kadam & Ors. – Vs.– The State of Maharashtra, AIR 1970 SC 1033; Alamelu & Anr. –Vs.– State, represented by Inspector of Police, AIR 2011 SC 715; Pinninti Venkataramana & Ors.-Vs.– State, 1976(2) (H.C.)159; Rajendra alias Raju –Vs.- State of Maharashtra, AIR 2002 SC 3390; K. Prabhakaran –Vs. – P. Jayarajan, AIR 2002 SC 3393;

Gabbu –Vs. – State of Madhya Pradesh [Appeal (Crl.) 791 of 1998 and Imperator – Vs. – Haji Baka & Ors., (1909)10 Cri LJ 208.

Mr. Imran Ali, learned Advocate appearing for the State has rebutted the contentions advanced by the learned Advocate appearing for the petitioner and submitted that there are overwhelming materials which have been relied upon by the prosecution to prove that the girl was a minor at the time when the offence was committed, as such her consent cannot be of any relevance as at the relevant point of time the dominance of the accused seems to be prevalent from her statement under Section 164 of the Code of Criminal Procedure. Learned Advocate for the State supported the findings and the judgment and order of conviction so passed by the learned trial Court and affirmed by the learned Appellate Court. In order to appreciate the provision under Section 366 of the Indian Penal Code, the relevant judgment of the Hon'ble Supreme Court is referred as follows:

Thakorlal D. Vadgama -Vs.- State of Gujarat, (1973) 2 SCC 413 :
1973 SCC (Cri) 835 at page 420 wherein it has been held that: “10. The legal position with respect to an offence under Section 366 IPC is not in doubt, in State of Haryana v. Rajaram [(1973) 1 SCC 544 : 1973 SCC (Cri) 428] this Court considered the meaning and scope of Section 361 IPC it was said there:

“The object of this section seems as much to protect the minor children from being seduced for improper purpose as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words ‘takes or entices any minor ...

out of the keeping of the lawful guardian of such minor' in Section 361, are significant. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud, persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section."

1. In the case cited reference has been made to some English decisions in which it has been stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force of a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducements by previous promise or persuasion was held in some English decision to be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in Section 361 IPC is "whoever takes or entices any minor". The word "takes"

does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, “to cause to go”, “to escort” or “to get into possession”. No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word “entice” seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. The two words “takes” and “entices”, as used in Section 361 IPC are in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 IPC. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to

him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating or encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case. In the case before us, we cannot ignore the circumstances in which the appellant and Mohini came close to each other and the manner in which he is stated to have given her presents and tried to be intimate with her. The letters written by her to the appellant mainly in November 1966 (Exhibit P-20) and in December 1966 (Exhibit P-16) and also the letter written by Mohini's mother to the appellant in September 1966 (Exhibit P-27) furnish very important and essential background in which the culminating incident of January 16 and 17, 1967 has to be examined. These letters were taken into consideration by the High Court and in our opinion rightly. The suspicion entertained by Mohini's mother is also in our opinion, relevant in considering the truth of the story as narrated by the prosecutrix. In fact, this letter indicates how the mother of the girl belonging to a comparatively poorer family felt when confronted with a rich man's dishonourable behaviour towards her young, impressionable immature daughter; a man who also suggested to render financial help to her husband in time of need. These circumstances, among others, show that the main substratum of

the story as revealed by Mohini in her evidence, is probable and trustworthy and it admits of no reasonable doubt as to its truthfulness. We have, therefore, no hesitation in holding that the conclusions of the two courts below with respect to the offence under Section 366 IPC are unexceptionable. There is absolutely no ground for interference under Article 136 of the Constitution.

I have perused the documents which have been relied upon by the prosecution in support of the age of the victim. To that effect the medical test report of the victim girl, the x-ray report and x-ray plates being Ext.4 series and Ext.5 was also taken into consideration. In addition to the same Ext.8 which was admission register of Char Doulatpur Primary School in respect of the serial no. 27 regarding admission of the victim Sundari Mondal in that school which was produced by the Head Master of the said School being PW13.

I am of the opinion that the cumulative appreciation of all the aforesaid documents taken as a whole cannot compel this Court to take a different view in respect of the age of the victim than that which has been accepted by the learned Courts below.

Thus the victim was a minor on the date of commission of the offence. Therefore, the statement of the victim girl under Section 164 of the Code of Criminal Procedure is diluted as the Court by exercising its discretion cannot accept the contention of the defence that a minor intended to marry on her volition as such the accused should be exonerated of the charges. It is the settled principle of law that the consent of a minor has got no

relevance and to that effect larger interest of the society is to be taken into consideration.

On scrutiny of the evidence and the reasons assigned by the trial Court as well as the Appellate Court in order to arrive at their conclusion of guilt there is no scope for interference, having regard to the reasons so assigned by them, the adherence to the settled principles of law and on a cumulative assessment of the facts of the case in the background of the charge for which the petitioner was tried.

It would not be out of place to state that this Court while exercising its revisional jurisdiction against an order of appeal will only re-appreciate the evidence as a whole provided there is some manifest error which is appearing in the records of the case or a substantial question of law is involved which was ignored by both the Courts below before arriving at its finding. With great respect, I am of the considered opinion that none of the issues arose in this case for this Court to interfere with the judgment and order of conviction passed by the trial Court and affirmed by the Appeal Court.

However, even if the conclusion of guilt arrived at cannot be interfered with, this Court is of the opinion that the quantum of sentence imposed upon the petitioner is excessive.

As such so far as the sentence imposed by the learned trial Court is concerned, interference is required as the incident is of the year 2007 i.e., almost 14 years have passed and the statement of the victim under Section

164 of the Code of Criminal Procedure, although the same was of a minor and could not be taken into account for the purpose of assessing the guilt of the accused but the same can be taken as a mitigating circumstance at this stage when the report which has been received from the concerned Officer-in-charge of the police station reflects that the victim has already settled in life with different person. The present petitioner was also young at the relevant point of time, although he was a major. In view of the aforesaid the sentence awarded by the learned trial Court and affirmed by the learned Appellate Court in respect of the offences under Section 363 and under Section 366 of the Indian Penal Code is reduced from R.I. of 7 years each to R.I of 2 years each with the fine amount and the default clause in respect of the fine remaining un-altered.

The petitioner is directed to surrender within a period of 30 days from the date to serve out the sentence. Records reflect that the petitioner is on bail, accordingly his bail bond is cancelled.

Both the sentence would run concurrently and the period of sentence which has been undergone by the petitioner during the stage of investigation, trial, appeal and revision would be set off from the substantive sentence so imposed.

Accordingly, the judgment and order dated 28.02.2011 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad, in Criminal Appeal No. 1/10 affirming the order of sentence passed by the learned Assistant Sessions Judge, Lalbagh, Murshidabad in Sessions Case No. 81/2007 is modified, so far as the sentence is concerned.

Consequently, CRR 52 of 2012 is disposed of.

Pending application, if any, is consequently disposed of.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR forthwith to the Court below.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)