

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 155 of 2017

**Prafulla Chandra Roy
Vs.
The State of West Bengal**

**For the Appellant : Md. Sarwar Jahan, Adv.
Mr.Firoze Hassan, Adv.**

**For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.
Ms. Faria Hossain,
Mr.Saryati Datta**

Heard on : 8.7.2021,23.7.2021

Judgment On : 30th July, 2021.

Bibek Chaudhuri, J.

In the instant appeal the judgment and order of conviction and sentence dated 6th January, 2017 and 7th January, 2017 respectively passed by the learned Additional Sessions Judge, Dinhata, Cooch behar in Sessions Trial No. 13(01)/ 2015 arising

out of Sessions Case No. 110 of 2013 is under challenge at the instance of the convict/appellant.

Bu passing the impugned judgment the appellant was convicted and sentenced to suffer rigorous imprisonment for three years and also to pay fine of Rs. 3,000/-, in default to suffer simple imprisonment for three years for committing offence under Section 363 of the Indian Penal Code.

Prosecution case was initiated on the basis of a written complaint submitted by one Rabindranath Sarkar stating, inter alia that on 13th August, 2011 his minor daughter aged about 16 years at the relevant point of time left the house to attend her tuition. But did not return home. On 16th August, 2011 the accused was caught red handed at Burdwan Railway Station with the daughter of the de facto complainant. It is alleged that the minor daughter of the de facto complainant was eloped by the accused and was kidnapped.

Police took up the case for investigation which culminated in filing charge sheet against the accused under Section 363/366A of the Indian Penal Code. Since the offence under Section 366A of the Indian Penal Code is triable exclusively by the Court of Sessions, learned Additional Chief Judicial Magistrate, Dinhata committed the case to the Court of the learned Sessions Judge,

Cooch behar who in turn transferred the case to the trial Court for disposal.

The accused duly appeared before the Court of trial charge under Section 363 /366A of the IPC was framed against him. As he pleaded not guilty, trial of the case commenced.

In order to establish the charge against the accused persons, prosecution examined as many as eight witnesses including the de facto complainant.

The learned trial Judge on appreciation of evidence held the accused guilty for committing offence under Section 363 of the Indian Penal Code , convicted him and sentenced him accordingly.

When the appeal was first taken up by this Court on 8th July, 2021, a report was called for from the learned Sessions Judge, Cooch behar to ascertain as to whether the appellant has served out the entire sentence or not. The learned Sessions Judge has submitted a report to this Court through the Registrar Administration (L & OM) in charge stating , inter alia that the appellant has already served out the entire sentence and was released from the Correctional Home.

Though the appellant has already served out the entire sentence, he can agitate the legality of the order of conviction in the instant appeal and this Court being a Court of facts of law is

under obligation to consider independently the evidence on record to satisfy as to whether the appellant was rightly convicted or not.

During the trial, the de facto complainant deposed as P.W. 1. In his evidence he corroborated the statement made by him in the FIR. It is found from his evidence that on 13th August, 2011 his daughter went to take tuition at Khotamara at about 10 a.m. thereafter she did not return to her house. The de facto complainant conducted search for his daughter but did not find him. On 15th August, 2011, he received a telephonic information from Burdwan police station that the appellant was apprehended along with his minor daughter at Burdwan Railway Station. He further deposed that he went to Burdwan on 16th August, 2011 and saw his daughter. The de facto complainant alleged that her daughter was eloped and kidnapped by the accused /appellant.

The evidence of the de facto complainant was corroborated by P.W.2 ,Subhal Chandra Sen.

P.W.7 is the victim girl. It is ascertained from her evidence that on 13th August, 2011 when she was returning home from private tuition, she was intercepted by three young men including the accused. One of the pillion riders got down from a motor cycle which was being driven by the accused and two

other persons shut her mouth by their hands and forcibly compelled her to ride on the said motor cycle then she was directly taken to Siliguri and from Siliguri the accused took her to Burdwan. On the next day at about 5.30 p.m. they got down from the train at Burdwan Railway Station she requested the accused to send her home but the accused denied. The accused was seen making mobile call to different persons. Then the witness sought for help of a person at Burdwan Railway Station and informed him about the entire incident . He took him to GRPS at Burdwan Railway Station the accused was caught red handed. Her father came to Burdwan. She also proved her statement recorded by the learned Magistrate under Section 164 of the Code of Criminal Procedure.

I have considered the entire evidence on record as well as the impugned judgment passed by the learned trial Judge .

I do not find any reason to take a different view from what has been taken by the learned trial Judge in the instant case.

In view of the above discussion, the instant appeal is dismissed on contest, however, without costs.

Let a copy of this judgment be sent to the learned trial Court for information along with the lower Court record.

(Bibek Chaudhuri, J.)