

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 377 of 2016

Samir Sardar & Anr.

-Vs-

The State of West Bengal

For the appellant: Mr. Somnath Banerjee.

For the State: Mr. Ranabir Roy Chowdhury,
 Mr. Mainak Gupta.

Heard on: July 15, 2021.

Judgment on: October 7, 2021.

BIBEK CHAUDHURI, J. : –

1. One Samita was given marriage with one Samir Sardar on 12th March, 2005. After marriage Samita was subjected to physical and mental torture on illegal demand of sum of Rs.10,000/- to be brought from her father. When such torture became unbearable she returned to her paternal home. However her father again brought her back to her matrimonial home with a hope that her daughter would have a happy conjugal life and cordial matrimonial home in course of time. However, the aforesaid hope and lofty desire went in vain when Samita again returned to her paternal home sometimes in the first week of July, 2005. The father of Samita went to her matrimonial home and requested Samir

not to inflict torture upon her. Samir assured him that there would be no torture in future upon Samita and took her back on 19th July, 2005. On 24th July, 2005 mother of Samir came to the paternal home of Samita and informed that she was missing since 23rd July, 2005. The father of Samita and other relatives conducted thorough search for her but did not find Samita. He lodged a missing diary in the local P.S on 28th July, 2005. However police did not take any step to find out and recover the said Samita. Finding no other alternative, father of Samita lodged a complaint before the learned Chief Judicial Magistrate at Alipore under Section 156(3) of the Code of Criminal Procedure.

2. The said complain was sent to Bishnupur P.S with a direction to treat the same as FIR and start a specific case against Samir Sardar and his parents. Police accordingly registered Bishnupur P.S Case No.57 dated 13th March, 2006 under Section 938A/346/120B/34 of the Indian Penal Code and took up the case for investigation.

3. On completion of investigation police submitted charge-sheet against the accused persons/appellants on 22nd November, 2007 under Section 498A/364/120B/34 of the Indian Penal Code.

4. It took about five years to commit the case to the Court of Sessions and the learned Sessions Judge received the case record on 14th September, 2012. The case was subsequently transferred to the 17th Court of the learned Additional Sessions Judge at Alipore vide order dated 3rd December, 2013.

5. On 17th July, 2014 the defacto complainant filed an application before the trial court stating, inter alia, that his daughter Samita is alive and she is residing at Pune, Maharashtra marrying another person, named, Budyut Saha. Accordingly Samita and her husband were produced before the trial court. The Investigating Officer of the case filed supplementary charge-sheet under Section 367/370 of the Indian Penal Code against the accused/appellants.

6. On completion of trial the learned Additional Sessions Judge, 17th Court at Alipore convicted the accused Samir Sardar and Yamuna Sardar for committing offence punishable under Sections 367/370 read with Section 120B of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for seven years and also to pay fine of Rs.10,000/- each in default, to suffer further rigorous imprisonment for two months for the offence punishable under Section 367 read with Section 120B of the Indian Penal Code. The accused persons were also convicted under Section 370 read with Section 120B of the Indian Penal Code and sentenced to suffer imprisonment under same description as under Section 367 read with Section 120B of the Indian Penal Code.

7. The instant appeal is at the instance of the aforementioned convicts assailing the impugned judgment delivered by the learned trial judge in the above mentioned case. It is submitted by the learned Advocate for the appellants that marriage of Samita was solemnised with the appellant No.1 on 12th March, 2005. After marriage she went to her matrimonial home. In the FIR, it was alleged by the defacto complainant that after

marriage her daughter was subjected to physical and mental torture on demand of money of Rs.10,000/- and other gold ornaments. In the month of July, 2005 she was driven away from her matrimonial home. On 19th July, 2005 Samir took her back to her matrimonial home. Thereafter on 24th July, 2005 appellant No.2 came to the paternal home of Samita and informed the defacto complainant that his daughter was missing from her matrimonial home on and from 23rd July, 2005. It is pointed out by the learned Advocate for the appellants that the FIR was lodged after about eight months from the date of occurrence, i.e., on 13th March, 2006. There was no explanation of delay in lodging the FIR and such unexplained delay is fatal for the prosecution.

8. Learned Counsel for the appellants further submits that in the FIR filed by the defacto complainant it was alleged that the daughter of the defacto complainant was missing from her matrimonial home on and from 23rd July, 2005. The said information was given by the appellant No.2 herself to the defacto complainant. Subsequently, the victim appeared during the pendency of the case with another person namely, Bidyut Saha and introduced a new story that she was sold out by her husband to an unknown woman at Howrah Station. She took her away to Pune in the State of Maharashtra and sold her in a red-light area. In the said red-light area she was acquainted with PW5 Bidyut Saha. Bidyut fell in love with Samita and took her to his house after marrying her.

9. According to the learned Advocate for the appellants, the subsequent story ought not to have been incorporated in the instant case.

Police submitted supplementary charge-sheet against the appellant after commencement of trial illegally without taking any permission from the learned Chief Judicial Magistrate, Alipore for further investigation. In view thereof the learned trial judge erroneously held the appellants guilty for committing offence under Section 367 and 370 of the Indian Penal Code read with Section 120B of the said Act.

10. Last but not the least, it is submitted by the learned Advocate for the appellant that the appellants suffered sentence for about five years and two months. Considering the facts and circumstances of the case he prays for setting off the period of sentence already undergone against the period of punishment.

11. Learned P.P.-in-Charge on the other hand submits that marriage of appellant No.1 was solemnized with Samita in the year 2005. Within four months of marriage, Samita was missing from her matrimonial home. The learned Counsel for the appellant has criticized the judgment passed by the trial court on the ground that the trial court did not consider delay in lodging the complaint.

12. In this regard it is submitted by the learned P.P.-in-Charge that immediately after getting the information from the appellant No.2 that the daughter of the defacto complainant was missing, he made a missing dairy in the local police station. However, the police authority could not trace out the daughter of the complainant. Then on 17th December, 2005 he made an application under Section 156(3) of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Alipore with a

prayer to send the said application to the O.C Bishnupur Police Station and to treat the same as First Information Report and to start a specific case against the accused persons. The officer-in-charge, Bishnupur Police Station received the said application on 13th March, 2006 and registered Bishnupur Police Station Case No.57 dated 13th March, 2006 under Section 498A/364/120B/34 of the Indian Penal Code. According to him the victim being the legally married wife of the appellant No.1 was missing from his house, it was the duty of the appellant No.1 or his parents to lodge a complaint in the local police station. But they did not take any legal step. Therefore, the father of the victim lady was compelled to make an application under Section 156(3) of the Code of Criminal Procedure for drawing up a specific case against the accused persons. Therefore, the accused person cannot take shelter under the umbrella of delay in lodging the FIR when they themselves failed to bring the matter to the knowledge of the police authority to set the criminal justice system in motion.

13. It is further submitted by the learned Advocate for the state that during trial, the case took a dramatic twist. Victim Samita appeared in the scene with another person, named Bidyut Saha. With the permission of the Court, police took up further investigation and submitted supplementary charge sheet against the accused persons under Section 367/370/120B of the Indian Penal Code against the appellants. Victim Samita and Bidyut Saha were cited as witnesses in the supplementary charge sheet.

14. Samita was examined as PW4. It is learnt from his evidence that after marriage she was subjected to physical and mental torture by the accused persons. After four months of marriage, she returned to her paternal home but her father again took her to her matrimonial home and kept her there. While she was in her matrimonial home, one day the appellant No.1 proposed to visit his paternal aunt's house with her. Accordingly, both of them came to Howrah station. Samir told his wife to sit with another lady to whom he introduced as the neighbour of his aunt and left away. Samita was waiting for her husband, but he did not return. In the mean time, the said lady told her that the train had come to the station and on her insistence, Samita boarded the train. Thereafter, she did not know anything as she lost her sense after taking some food given by the said woman. She was taken to Pune. The said women told her that her husband sold her to the said woman. She was taken to red-light area at Budhabet, a red light area at Pune. While working as prostitute at Budhabet, he met PW5 Bidyut Saha who used to go to the said red light area. Bidyut Saha proposed her to marry. She married to Bidyut and in their wedlock Samita gave birth to a male child.

15. Bidyut Saha deposed before the trial court as PW5 and corroborated the evidence of Samita (PW4).

16. The learned trial judge on due consideration of the evidence on record found both the appellant guilty for committing offence under Section 367/370 read with Section 120B of the Indian Penal Code and convicted and sentence them accordingly.

17. I have carefully gone through the judgment passed by the learned trial judge.

18. It is not disputed that marriage of appellant No.1 was solemnized with PW4 Samita. Indisputably, Samita was missing after about four months of marriage from her matrimonial home. The accused persons failed to give any explanation as to how and why Samita disappeared from her matrimonial home. From the evidence of PW4 it is ascertained that she was sold by her husband to a woman at Howrah Station. The said woman took her to Pune in the state of Maharashtra and she compelled her to work as prostitute in the red light area of Pune.

19. PW5 Bidyut Saha corroborated the evidence of PW4.

20. Samita was married to Bidyut at Pune. She had no connection with the appellant No.1. Moreover, PW5 Bidyut Saha had no interest about the instant case. Samita is at present living happily with Bidyut and their only son. Therefore, there is no reason to hold that Samita would depose falsely against the appellants. It is established from the evidence on record that Samita was taken to Howrah Station by appellant No.1 on false promise to take her to his paternal aunt's house. Thus, the appellant No.1 by deceitful means induced his wife to go from her matrimonial home to Howrah Station. It is also established that in Howrah Station she was handed over to a lady by Samir who introduced herself as a neighbour of the aunt of Samir. Then she was trafficked to Pune for sexual exploitation.

21. In view of clinching evidence on record, I am of the considered view that the learned trial judge rightly held the appellant No.1 guilty for committing offence under Section 367 and 370 of the Indian Penal Code. There is no reason to alter the order of conviction and sentence passed against the appellant No.1.

22. However, on careful scrutiny of evidence on record, I do not find any evidence under Section 367 and 370 of the Indian Penal Code against appellant No.2 Yamuna Sardar. There is absolutely no evidence that she conspired with his son, Samir for abduction and illegal trafficking of her daughter-in-law Samita.

23. In view of the above discussion, the instant appeal is partly allowed on contest.

24. The judgment and order of conviction and sentence passed against appellant No.1, Samir Sardar is affirmed.

25. However, the judgment and order of conviction and sentence against Yamuna Sardar is set aside.

26. Yamuna Sardar be acquitted from the charge set at liberty and released from her bail bond.

27. Let a copy of this judgment be sent to the learned Court below for information and compliance forthwith.

(Bibek Chaudhuri, J.)