

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 627 of 2016

***Sahanaj Gazi @ Gazi Md. Sahanaz
-Vs-
State of West Bengal & Anr.***

For the Appellant :

Mr. Bibaswan Bhattacharyya, Adv.
Mr. Sahid uddin Ahmed, Adv.

For the State :

Mr. Noguive Ahmed .. Ld. Addl. Public Prosecutor
Ms. Trina Mitra, Adv.

Heard on :

03.12.2021

Judgment on:

03.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 14th September, 2016/16th September, 2016 passed by the learned Additional Sessions Judge, F.T.C.-II, Alipore, South 24-Parganas in Sessions Trial No. 01(05)12 (Sessions Case No. 25(12)11) convicting the appellant for commission of offence punishable under Section 366 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and

to pay fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Section 366 IPC with a further direction that 50% of the fine amount, if realised, will be paid to the victim girl as compensation.

The prosecution case as alleged against the appellant is to the effect that the appellant had abducted the victim girl on the false promise of giving employment. Thereafter, she was initially detained at the residence of the appellant and finally sold off to a brothel in Pune, Maharashtra. The victim was recovered from the brothel and kept in safe custody of Pune Rescue Foundation. Her father (PW1) lodged complaint before the police station resulting in registration of Namkhana Police Station Case No.32 of 2011 dated 01.06.2011 under Sections 363/366/372 IPC against the appellant. In the course of investigation, the victim girl made statement before the Magistrate. In conclusion of investigation, charge-sheet was filed against the appellant. Charges were framed under the aforesaid provisions of law. The appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 10 witnesses including the victim girl as PW2. The defence of the appellant was one of innocence and false implication. The appellant summoned one Sayan Krishna Basak, constable attached to Namkhana Police Station to produce a general diary. The general diary, however, was not proved and marked for identification. In conclusion of trial, the trial Judge by the impugned judgment and order dated 14th September, 2016/16th September, 2016 convicted and sentenced the appellant, as aforesaid.

Mr. Bibaswan Bhattacharyya, learned counsel appearing for the appellant submits that the evidence of the victim girl (PW2) is inconsistent with her earlier statement before the Magistrate and does not inspire confidence. There is no independent evidence corroborating her version that the appellant had abducted and detained her at his residence and thereafter, sold her to the brothel at Pune. Police officer who recovered her from the brothel has not been examined. Although PW1 claimed that the victim girl was missing since March 2010, general diary lodged in that regard has not been produced. It is further submitted that the evidence of PW3, officer of the NGO where the victim girl was kept after recovery is an embellished version. Hence, the prosecution case has not been proved beyond doubt.

Ms. Trina Mitra, learned advocate, appearing for the State, submits that the evidence of the victim girl (PW2) is consistent when compared with her earlier statement recorded by the Magistrate (PW7). The victim also narrated the same incident to her father (PW1) and doctor (PW8) who had examined her after her recovery. Hence, the prosecution case is proved beyond doubt.

PW2 is the most vital witness in the present case. She deposed she was pursuing a nursing course when she had met the appellant in a tea stall. The appellant had assured her to get a good job and visited her residence. On such assurance, the appellant took her away. She became senseless and when she recovered she found that she was in the house of the appellant under lock and key. She was threatened with dire

consequences and kept detained in the said house. Finally, she was removed at night from the residence of the appellant. She became unconscious. When she regained her senses, she found that she was in Pune. One of the girls viz. Puja told her that she had been sold by the appellant. She was beaten by the said girl and thereafter, she was forced into prostitution. Finally, with the help of a customer and police she was rescued. She was interrogated by the police and made statement before the Magistrate.

PW1, Biddut Kumar Kayal, is the father of the victim girl. Although he was declared hostile, he deposed that he had lodged a written complaint and proved his signature thereon. He stated after recovery from Pune, her daughter narrated the incident to him.

PW3, Aparna Sen is an officer attached to Anti-traffic Unit, Jabala Act and Research Organisation. She deposed on 26th May, 2011 on the order of the court they received the victim girl. On 1st June, 2011, they handed over the girl to her father at Namkhana Police Station. The girl had narrated the incident to her.

PW7, Goutam Kr. Nag is the Magistrate who recorded the statement of the victim girl (Exhibit-2).

PW8, Dr. Karabi Haldar is the medical officer attached to Kakdwip Sub-divisional hospital who examined the victim girl. The victim girl stated to her that the appellant had taken her to Mumbai on the assurance of a job and she was repeatedly raped for six months. She proved the medical report (Exhibit-3).

PW9, Thakurpada Mondal and PW10, Narayan Ch. Saha are the Investigating Officers of the case.

From the aforesaid evidence on record it appears that the evidence of the victim girl is substantially corroborated by the evidence of her father (PW1), PW3 and the medical officer (PW8). The appellant had befriended the victim girl while she used to go to the nursing institute. On the assurance of employment, he took her to his residence. There she was detained for some days and finally the appellant sold her to a brothel in Pune. It is argued that the version of the victim girl is at variance with her statement before the Magistrate (Exhibit-2).

I have compared the deposition of PW2 with her statement recorded before the Magistrate. In her statement before the Magistrate, victim claimed on the assurance of giving job, she was taken to the residence of the appellant where she was detained and finally compelled to marry. Thereafter, the appellant sold her to a brothel where she was repeatedly raped. Apart from the fact that the appellant had entered into a sham marriage with the victim, there is no contradiction between her deposition before the court and that to the Magistrate.

Hence, I am convinced that the victim had truthfully narrated the unfortunate incident of dishonestly duped by the appellant on the false promise of giving employment and detained her at his residence. Ultimately, she was sold to a brothel at Pune. Although the police officer who recovered her from the brothel has not been examined, such recovery is probalised through the evidence of PW3, an officer of the Anti-traffic Unit, Jabala Act

and Research Organisation wherein the victim was kept in safe custody after recovery. Finally, the victim was handed over to her father at Namkhana Police Station. Upon being handed over to her father, she narrated the incident to him as well as to the medical officer (PW8) who had examined her. PW8 recorded such version in the medical report (Exhibit-3). These circumstances wholly corroborate the version of the victim girl and establish the prosecution case.

In the aforesaid factual backdrop, failure to produce the initial missing diary does not affect the truthfulness of the version of the victim girl which is corroborated from other sources, as aforesaid.

Thus, I am of the opinion that the conviction and sentence of the appellant requires to be upheld.

The appeal is accordingly, dismissed.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)