

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 651 of 2016

Banti Biswas

-Vs-

The State of West Bengal & Anr.

W I T H

C.R.A. 650 of 2016

Pinki Biswas & Anr.

-Vs-

The State of West Bengal & Anr.

For the Appellants : Mr. Arnab Chatterjee, Adv.
Ms. Dhanasree Biswas, Adv.

For the State : Mr. Madhusudan Sur .. Id. A.P.P.
Mr. Manoranjan Mahata, Adv.

Heard on : 13.09.2022

Judgment on : 13.09.2022

Joymalya Bagchi, J. :-

Appeals are directed against the judgment and order passed by the learned Additional District & Sessions Judge, 5th Court, Murshidabad in Sessions Trial No. 2 of 2013 arising out of Sessions Serial No. 399 of

2013 convicting Banti Biswas (appellant in Criminal Appeal No. 651 of 2016) for commission of offence punishable under section 363/366A/372/376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 363 of the Indian Penal Code, to suffer rigorous imprisonment for six months for the offence under section 366A of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 372 of the Indian Penal Code and to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 6,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 376 of the Indian Penal Code; convicting Pinki Biswas (appellant No. 1 in Criminal Appeal No. 650 of 2016) for commission of offence punishable under section 363/366A/372 of the Indian Penal Code and sentencing her to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 363 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 366A of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for

six months for the offence under section 372 of the Indian Penal Code and convicting Radhika Rao (appellant No. 2 in Criminal Appeal No. 650 of 2016) for commission of offence punishable under section 373 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 15,000/-, in default, to suffer rigorous imprisonment for six months for the offence under section 373 of the Indian Penal Code.

Prosecution case as alleged against the appellants is to the effect that the victim girl (P.W. 2) aged about 14/15 years, daughter of Khalek Sekh (P.W. 1) went missing since 5:00 p.m. on 29.03.2013; on enquiries, P.W. 1 came to learn the victim had received a call from a mobile No. 9641902019; thereafter, being accompanied by her friend P.W. 10, she went Rejinagar Railway Station; P.W. 1 lodged missing diary at police station on 31.03.2013; on 01.04.2013 at 08:30 a.m. he received a call from mobile No. 9804691355; his daughter stated "*baba ami Krishnanagare achi, amake niye jao*" (baba I am at Krishnanagar, please take me back); thereafter, the phone was disconnected; subsequently, he again received call from another mobile phone No. 9775238906; his daughter, however, could not be traced. Suspecting his daughter has been kidnapped by some persons for ill motive, on 03.04.2013 he lodged written complaint which was registered Rejinagar Police Station Case No. 77/2013 dated 03.04.2013 under section 363/366A I.P.C. against unknown persons.

In the course of investigation, Banti Biswas, Pinki Biswas and Anjali Biswas were arrested. Police recovered the victim girl from one “New Welcome Brothel” located at Budherpith at Pune on 10.05.2013. Victim girl stated she had been kidnapped and raped by Banti Biswas on two occasions and, thereafter, transported to Pune by Haridas Mondal, Banti Biswas, Pinki Biswas and Anjali Biswas for the purpose of prostitution. She was sold to Radhika Rao at Pune. Radhika used to manage the brothel where the victim was compelled to prostitution. Radhika Rao was arrested. Statement of the victim was recorded before Magistrate. She was also medically examined. Charge-sheet was filed and charges were framed against Banti Biswas under sections 363/366A/372/376 I.P.C., against Pinki Biswas, Haridas Mondal and Anjali Biswas under sections 363/366A/372 I.P.C. Charges under section 373 and 366A were framed against Radhika Rao.

In the course of trial, accused Anjali Biswas absconded and the case was filed against her. In order to prove its case prosecution examined 14 witnesses and exhibited a number of documents. Defence of the accused persons was one of innocence and false implications.

In conclusion of trial, trial Judge by the impugned judgment and order convicted and sentenced the accuseds, as aforesaid.

Mr. Chowdhury submits prosecution failed to prove the case beyond doubt. Evidence of the victim (P.W. 2) suffers from various

contradictions and inconsistencies. Her age has not been proved beyond doubt. He prayed for acquittal of the appellants.

Learned Counsel for the State submits victim girl (P.W. 2) was a minor. She had been lured out of legal guardianship of her father (P.W. 1) and, thereafter, sold at Pune for prostitution. Prosecution case has been proved beyond doubt.

P.W. 2 is the victim. She deposed she was a student of class IX at Rampara Manganpara High School. On 29.03.2013 being accompanied by her friend Asmina, P.W. 10, she went to Rejinagar Railway Station. Asmina asked her to buy ticket to go to Kalyani to meet Haridas who resided at Kalyani. She boarded the train. There she met one Rahul Sk who was known to her. With the help of Rahul, she went to his house and contacted Haridas. Haridas stated he was busy and asked her to come later. Then one Rahul Chowdhury told her to go to Sealdah. At Sealdah Station she met a lady who introduced herself as Sikha and proposed to take her to her residence. She identified the lady as Pinki Biswas. They went to Barrackpore Station. There she met a person whom Pinki introduced as her brother-in-law, namely, Sonu. Later, he came to know he was Banti Biswas. Banti took her to a cinema hall by force. Thereafter, they took her to Tarekshwar and compelled her to drink and raped her against her will. From the hotel, Banti called his mother and told her that he wanted to sell her at Pune. She was threatened and compelled to accompany Banti to Howrah Station. They

took a train to Mumbai. At Mumbai Banti again raped her against her will. On the next day, she was taken to a temple and sold to one aunty, namely, Radhika Rao. Radhika compelled her to prostitution. After one and half months, police rescued her. She stated the fact before Magistrate. She identified Radhika Rao, Pinki, Banti and Haridas in T.I. parade.

P.W. 1 is the father and de-facto complainant. He deposed victim went missing from 5:00 p.m. on 29.03.2013. He lodged missing diary on 31.03.2013. He deposed Asmina Khatoon friend of the victim received phone call from an unknown number. Last two digit of the number was given to the police. On 1st April, 2013, victim called her father from an unknown number and told him to rescue her. The last two digit of the unknown number was 55. He lodged first information report. He along with one Banti and police officer went to Mumbai. Banti showed Radhika Rao and the victim was recovered from the prostitute quarter.

P.W. 4, Purnima Ball (Ghosh) is a lady constable who deposed pursuant to direction she assisted officials of Berhampore Police Station to raid the house of Banti Biswas at Adarshapolly at Barrackpore. Banti Biswas, Pinki Biswas and Anjali Biswas were arrested. Mobile phones, ATM cards, two railway tickets were recovered.

P.W. 5, Palash Biswas, a civic police volunteer also assisted officials of Berhampore Police Station to arrest Banti Biswas, Pinki

Biswas and Anjali Biswas from the residence of Banti. He also witnessed the recovery of mobile phones, railway tickets, sim cards and ATM cards.

P.W. 6, Alimuddin Sk., is a local villager who has corroborated the evidence of P.W.1.

P.W. 10, Asmina is the friend of the victim. She deposed her maternal uncle's house was located at Rejinagar. On 29.3.2013 she told the victim that Subho had promised to marry her. She asked the victim to accompany her to Rejinagar Railway Station. Victim requested Akash, her neighbour to buy tickets so that she may go to Kalyani as Subho told her to come to Kalyani Station.

P.W. 11, Dr. Sujoy Biswas, examined the victim. He did not find any genital injury. On internal examination he found her hymen was absent. He proved the medical report marked as Exhibit 13.

P.W. 14, Dhiman Gayen, is the teacher-in-charge of Rampara Manganpara High School. He proved the character certificate dated 3.6.2013 issued in favour of the victim by one Md. Najrul Islam, headmaster of Rampara Manganpara High School marked as Exhibit 37. From the certificate it appears date of birth of the victim was 22.2.1999.

P.W. 13, Saumya De, is the investigating officer. He went to the house of the *de facto* complainant. He interrogated witnesses. He came to know from P.W. 10, friend of the victim, that victim had a love affair with one boy. From her he collected the SIM card number of a mobile phone. He also got tower location of the mobile phones referred to in the

FIR. He found SIM card number obtained from P.W. 10 was issued in the name of Haridas Mondal. His mobile number was 9641902019. He traced out the location of the mobile phone used by the victim to call her mother. He found that the mobile phone was also used in Pune. He found the said phone was being used in Barrackpore. With the help of local police, he arrested Banti Biswas, Anjali Biswas, Pinki Biswas from Adarshapolly under police station Titagarh. He seized 11 SIM cards, two ATM cards and one railways ticket of Mumbai from them. He recorded the statement of Banti. He took permission from SP to go to Pune to work out the information. He along with other police personnel including two lady constables, namely, Ayesha Sultana and Sadhana Singha (P.Ws. 7 and 8) went to Pune on 6.5.2013. Banti and father of the victim, P.W. 1 reached Pune on 8.5.2013. On the basis of information received from Banti they went to an area called Budherpith and traced out one Radhika Rao. She was arrested from “New Welcome Brothel” located at Budherpith in Pune. As per the statement of Radhika he recovered the victim girl from “Old Welcome Brothel”. He arrested Radhika Rao. Thereafter, he came back from Pune with victim girl. He produced the victim girl to record her statement under section 164 Cr.P.C. Victim identified the persons in the course of T.I. parade. He submitted charge-sheet.

From the aforesaid evidence on record it appears that the victim (PW2) was 14/15 years old at time of occurrence. She was a student of

class IX of Rampara Manganpara High School. On 29.3.2013 she left her house to meet her boyfriend Haridas Mondal. Asmina, her friend (PW 10) had accompanied her to the railway station. She purchased a ticket and boarded the train towards Kalyani. Haridas stated he was unable to meet her. She met one Rahul Chowdhury who told her to go to Sealdah railway station. She met a lady who introduced herself as Sikha. She identified her as Pinki. Pinki took her to Barrackpore and introduced her to Banti. Thereafter Banti took her to a hotel at Tarakeswar and forcibly ravished her. Under threat of death, she was taken to Pune and sold to a brothel owner, Radhika Rao.

Learned counsel for the appellants submits victim willingly left her parental home. He also contends her deposition suffers from inherent improbabilities.

I have considered the evidence of the victim (PW2) from the aforesaid perspective. She had left her paternal home with a desire to meet her boyfriend Haridas. Taking advantage of the situation, Pinki Biswas and Banti Biswas waylaid her. She was barely 14/15 years old. Banti took her to Tarakeswar and forcibly raped her. Thereafter, she was in his custody and under threat of death, she was taken to Mumbai. Out of fear, she was unable to raise hue and cry. Overwhelming control of the appellants on the minor girl establishes the oppressive circumstances under which she had been kidnapped and transported to Mumbai for prostitution. Due to fear of her own life, she was unable to raise protest

against the kidnappers. Hence, I do not find much substance in the issues raised on behalf of the defence regarding improbabilities in the version of the victim. Her deposition finds corroboration from her father (PW 1), a co-villager (PW 6) and her friend (PW 10). Their evidence show she had gone missing from 29.3.2013. Missing diary was lodged on 31.1.2013. On 1.4.2013 her mother received a frantic phone call from the victim stating she had been detained and requesting her to recover her. Investigating officer (PW 13) made enquiries with regard to SIM card number of her friend by 10 as well as the tower location of the phone numbers from which mother of the victim had been contacted. Pursuant to such investigation, PW 13 traced out Banti, Pinki and Anjali at their residence at Adarsha Pally Barrackpore. PW 13 interrogated Banti. Pursuant to his statement he went to Pune. At Pune, whereabouts of Radhika Rao, the brothel owner was traced. She was arrested from "New Welcome Brothel". On her showing, the victim was recovered from "Old Welcome Brothel".

Recovery of the victim from the brothel is proved by her father (PW 1) and two lady constables (PWs 7 and 8) who had accompanied the investigating officer, PW 13.

In the light of the aforesaid discussion, I hold prosecution case against the appellants have been proved beyond reasonable doubt. Conviction and sentence of the appellants are upheld.

Appeals are, accordingly, dismissed.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

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