

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CRLREV No.655 of 2005**

*Ghasiram Singh* ..... *Petitioner*

-versus-

*State of Orissa* ..... *Opposite Party*

**Advocates appeared in this case:**

*For the Petitioner* : Mr. Bhabani Shankar Das Parida  
Advocate

*For the Opposite Party* : Mr. J. Katikia  
Addl. Government Advocate

**CORAM:  
THE CHIEF JUSTICE**

**JUDGMENT**  
**28.09.2022**

**Dr. S. Muralidhar, CJ.**

1. This criminal revision petition is directed against a judgment dated 29<sup>th</sup> June 2005 of the Adhoc Additional Sessions Judge (Fast Track Court), Baripada dismissing the Appellant's Criminal Appeal No.15/13 of 2005 thereby affirming the order dated 19<sup>th</sup> January 2005, passed by the Assistant Sessions Judge-cum-CJM, Mayurbhanj, Baripada in S.T. Case No.10/2 of 2003 convicting the Petitioner for the offence under Section 363 IPC and sentencing him to undergo imprisonment for two years and to pay

a fine of Rs.2000/- and in default to undergo imprisonment for six months.

2. This Court has heard the submissions of Mr. B.S. Das Parida, learned counsel appearing for the Petitioner and Mr. J. Katikia, learned Additional Government Advocate for the State.

3. The case of the prosecution is that Sunaram Singh (P.W.1), the father of Shantilata Singh (P.W.13) lodged an FIR at the Bangiriposi Police Station (PS) that on 25<sup>th</sup> June 2002 at around 2 pm, the Petitioner had kidnapped his minor daughter (P.W.13) while she was under treatment in the hospital. She was 13 years old at that time. He came to know that the accused had kept her confined in his house. The case was lodged under Section 363 IPC.

4. The investigation was taken up by the Sub-Inspector (SI) Dolamani Bhoi (P.W.9). During the course of investigation, P.W.9 recovered the victim from the house of the accused and handed her over to her father P.W.1. P.W.9 also seized the admission register of the victim from the Saraswati High School under seizure list (Ext.8). The victim was also sent to the radiologist for determination of her age. The charge sheet was laid against the accused for the offences under Sections 366/376 IPC. The accused denied his guilt and claimed trial.

5. On behalf of the prosecution, 16 witnesses were examined. No witness was examined for the defence. On an analysis of the

evidence, the learned Assistant Sessions Judge by the judgment dated 19<sup>th</sup> January 2005 concluded that the prosecution had failed to prove the case against the accused for the offences under Sections 366 and 376 IPC, but sustained his conviction under Section 363 IPC. In coming to the above conclusion, the trial court relied on the evidence of the doctor (P.W.16) who in his report (Ext.13) found no signs of recent sexual intercourse and that in fact there was no sexual intercourse. P.W.13 also in her testimony admitted in her cross-examination that she did not marry the accused. She also nowhere stated that the accused compelled her for marriage. Consequently, the trial court concluded that the ingredients for the offence under Section 366 IPC or for that matter Section 376 IPC were not made out. What however stood proved was that the accused had kidnapped a 13 year old girl and kept her confined in his house and therefore, the offence under Section 363 IPC stood attracted.

6. The Adhoc Additional Sessions Judge (Fast Track Court), Baripada i.e. the appellate court has in the appeal filed by the present Petitioner again discussed the entire evidence. The evidence of doctor (P.W.11) confirmed that the age of the victim was between 16 and 17 years. From the evidence of the parents, it appeared that she was 14 years which was what emerged even from the school admission register. The opinion of the radiologist (Ext.12), after taking into account all ranges and variations, placed the age of the victim to be between 16 and 17 years. Keeping in view all the factors, the appellate court confirmed the decision of the trial court and dismissed the appeal.

7. Learned counsel appearing for the Petitioner focused on the age of the victim. He sought to contend that a margin of two years had to be added to the age determined by the radiologist's report and if it were so added, she would be above eighteen years. Therefore, the offence under Section 363 IPC would not be made out.

8. The Court is unable to agree with the above submissions. Apart from the victim giving her own age at the time of the occurrence as 13 years, the report of the radiologist places her age between 16 and 17 years. The school certificate places it at 14 years. There is no scope for addition of two years to the age as determined by the radiologist in the circumstances. Viewed from any angle therefore it appears that the age of the victim was below 18 years on the date of the occurrence. In the circumstances, the trial court was not in error in concluding that the offence under Section 363 IPC stood attracted.

9. The accused was a young man of around 20 years at the time of occurrence. From the evidence also, it appears that she went with the accused voluntarily and not under any compulsion. The offence of kidnapping involves someone "taking or enticing any minor female under the age of 18" out of the custody of the lawful guardian and without the consent of such guardian. These elements have no doubt been fulfilled in the present case. In terms of Section 363 IPC, the punishment for kidnapping is imprisonment for a term which may extend to 7 years along with fine.

10. Considering the fact that all along the Petitioner was on bail and was perhaps in custody from the date of the judgment of the appellate court i.e., 29<sup>th</sup> June 2005, till 21<sup>st</sup> September 2005, when he was released on bail, the Court is inclined to modify the sentence to the period already undergone while sustaining the fine amount of Rs.2000/- and in default to undergo simple imprisonment for 6 months subject to setting off the period already undergone. Therefore, while sustaining the conviction of the Petitioner for the offence under Section 363 IPC, the sentence is modified in the manner indicated above.

11. The interim order of stay of the realization of fine amount is hereby vacated. If the Petitioner does not pay the fine amount within a period of four weeks then the default sentence will come into force.

12. The criminal revision is disposed of in the above terms. A copy of this judgment be transmitted forthwith to the trial court.

**(S. Muralidhar)**  
**Chief Justice**

*S. K. Jena/Secy*