

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

Present:

The Hon'ble Justice Bibhas Ranjan De

**CRA 6 of 2021
IA No. CRAN 2 of 2023
Goutam Patra & Ors.
Vs.
State of West Bengal**

For the appellants/
Applicants

:Mr. Jayanta Narayan Chatterjee, Adv.
Ms. Moumita Pandit, Adv.
Mr. Supreme Naskar
Ms. Jayashree Patra
Ms. Ritushree Banerjee
Ms. Pritha Sinha
Mr. Bhaskar Mondal

For the State

:Mr. Ranabir Roy Choudhury, Adv.
Mr. Moninak Gupta, Adv.
Mr. Pratik Bose

Heard on

:11.10.2023 & 12.10.2023

Judgment on

:17th October, 2023

Bibhas Ranjan De, J.**Facts**

1. A criminal investigation was set in motion on receipt of the FIR dated 06.03.2011 lodged by Smt. Anuradha Sardar wife of Sri Haripada Sardar of village Neruli Abad, District North 24 Parganas with the officer in-charge of Minakhan Police Station alleging inter alia that the marriage of her daughter/prosecutrix aged about 17 years was settled and preparations for the same were almost completed. The date of marriage was fixed on 22nd Falgun, 1417 B.S.
2. Amidst such scenario on 01.03.2011, the prosecutrix was going to visit the house of her elder sister namely Purabi Halder at North Singur Village under Police Station Sonarpur, District South 24 Parganas. The prosecutrix was accompanied by her brother Jayprakash who took the prosecutrix to Neruli Hatkhola at about 3 p.m. on that day. Thereafter, prosecutrix boarded on an Engine/motor van at Neruli, Hatkhola in presence of Jayprakash in order to go to Malancha. From there she was to take a bus in order to go to her elder sister's house at Uttar Singur Village.

- 3.** At night, on that day the informant called her elder daughter over telephone and to her utter despair she came to know that the prosecutrix did not reach the house of Purabi, her elder daughter. After getting this information the complainant started searching for prosecutrix but to no avail. Thereafter, she lodged a general diary being G.D Entry no. 161 dated 03.03.2011 at Minakhan Police Station regarding the said missing of her daughter. It was further alleged firmly that the accused had kidnapped her minor daughter and forcefully confined her in a house.
- 4.** Based on the said First Information Report Minakhan Police Station Case no. 51/11 dated 06.03.2011 was registered under Section 363/366/120B of the Indian Penal Code, 1860 (for short IPC) against the accused persons.
- 5.** On completion of investigation of the case, charge sheet was submitted on 14.09.2016 before the Court of Ld. Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas under Section 363/366/120B/376 of the IPC. Cognizance was taken and the case was committed to Ld. Additional Sessions Judge, Basirhat who, in turn, transferred the case to Ld. Additional Sessions Judge, Fast Track Court no.3, Basirhat for disposal.

- 6.** Ld. Additional Sessions Judge, Fast Track 3rd Court, Basirhat on receipt of the case, framed charge against all three appellants under Section 363/366/34 of the IPC and separate charge was framed against appellant/accused Goutam Patra under Section 376 of IPC. To which all the appellants/accused pleaded not guilty and claimed to be tried.
- 7.** Ld. Judge, recorded evidence of five witnesses namely Anuradha Sardar/complainant (mother of the prosecutrix) as PW1, Jayprakash Sardar (brother of the prosecutrix) as PW2, Mahadeb Bachhar (neighbor) as PW3, Bikash Sardar (another brother of the prosecutrix) as PW4 and the prosecutrix herself as PW5.
- 8.** In course of their evidence signature of the complainant was admitted in evidence as exhibit 1 and original transfer certificate of prosecutrix was admitted as exhibit 2. On behalf of the defence the signature of PW5 on notarized affidavit dated 20.06.11 was admitted as exhibit A.
- 9.** After recording evidence Ld. Judge, examined all the appellants/accused under Section 313 of Code of Criminal Procedure (for short CrPC).

10. Ld. Judge, upon considering the evidence adduced on behalf of the prosecution as well as documents relied on behalf of the prosecution particularly the evidence of PW5 (prosecutrix), recorded an order of conviction against all the appellants/accused and sentenced them to suffer simple imprisonment for five years each and also to pay a fine of Rs. 4000/- each in default to suffer further simple imprisonment for six months for the offence punishable under Section 363/34 of the IPC. Appellants/convicts were further sentenced to suffer further simple imprisonment for seven years each and also to pay a fine to Rs. 6000/- each in default to suffer further simple imprisonment for six months for the offence punishable under Section 366/34 of the IPC. Both the sentences were ordered to run consecutively.

11. Being aggrieved by and dissatisfied with the said judgment appellants preferred the instant appeal.

Argument

12. Ld. Counsel, Mr. Jayanta Narayan Chatterjee, appearing on behalf of the appellants has assailed the impugned

judgement by submitting that Ld. Judge, failed to appreciate the evidence recorded in this case on the following grounds.

- Content of the FIR was not admitted in evidence while admittedly complaint was not reduced into writing by the complainant herself.
- Though alleged incident of kidnapping took place in the bus stand area but there is no single evidence to that effect to corroborate the evidence of prosecutrix PW5.
- All other four witnesses did not witness the alleged fact of kidnapping. Moreover, PW3 being only independent witness testified that prosecutrix of this case left her house.
- Out of eleven charge sheeted witnesses prosecution was able to examine only 5 witnesses and particularly prosecution could not produce the investigating officer to be examined in this case.
- Though statement of victim was recorded by the Ld. Magistrate after three years (11.07.2014) of the alleged incident dated 01.03.2011, but the statement under Section 164 of the CrPC was never admitted in evidence.

- Exhibit A exposed the actual fact of love affairs between the Appellant/ Gautam Patra and victim who left her house voluntarily.

13. In sum and substance, it is vehemently argued by the Ld. Counsel for the appellants that the prosecutrix having love affairs with Goutam Patra left her house voluntarily because of her social marriage settled by her parents which was due within few days of time. Mr. Chatterjee, in support of his contention, relied on a case of ***Mafat Lal and another Vs. State of Rajasthan reported in (2022) 6 Supreme Court Cases 589.***

14. Ld. Counsel, Mr. Ranabir Roy Choudhury, appearing on Behalf of the State has contended that production of prosecutrix before Minakhan Police Station by the Appellants/accused Goutam Patra cannot be denied and thereby it can be conclusively presumed that prior to production of the prosecutrix before Minakhan Police Station the victim was residing with the appellants for last six months. Mr. Chowdhury has further submitted that evidence of prosecutrix (PW5) could not be discredited by the defence and moreover no suggestion was put to her on behalf of the

defence regarding love affairs and marriage between appellant/accused Goutam Patra and the prosecutrix.

- 15.** Before parting with his argument Mr. Chaudhury submitted that latches on the part of the investigation cannot be a ground for acquittal of the accused.

Analysis

- 16.** This Court being appellate court, re-appreciation of entire evidence on record is very much required.

- 17.** Heard the Ld. Counsels for the parties and perused the record of Trial Court. On a cursory glance of the evidence deposited before the Trial Court, PW1 is the mother of the prosecutrix. She stated that marriage of her daughter/prosecutrix, aged 17 years, was scheduled to be held. But on 01.03.2011 i.e. six (6) days prior to that marriage prosecutrix was going to the house of her elder daughter at Sonarpur. Her younger son accompanied prosecutrix up to the market wherefrom prosecutrix boarded on a motor van towards Malancha to avail Sonapur bound bus therefrom. In the evening she called her elder daughter over telephone and came to know that prosecutrix did not reach Sonarpur. After two days she came to know that the prosecutrix was abducted by

the appellants. She lodge missing diary on 03.03.2011. Thereafter, on 06.03.2011 she lodged written complaint, reduced by one law clerk into writing, before Mikhan Police Station. She identified her signature (Exhibit 1/1). She also submitted a transfer certificate of school (exhibit 2).

18. In cross-examination PW1 denied the suggestion of marriage between prosecutrix and appellant Goutam Patra out of love affairs. She further stated that at the relevant point of time prosecutrix was 18 years of age. She denied specific suggestion that her younger son accompanied prosecutrix to Malancha wherefrom she went to Sonarpur and returned after three days. She did not witness the alleged incident of kidnapping. She denied suggestion that to avoid appellant Goutam Patra, marriage of the prosecutrix was arranged or FIR was lodged to harass the appellants.

19. PW2 is the brother of prosecutrix. He stated that he accompanied prosecutrix up to Neruli Bazar wherefrom prosecutrix boarded on engine van for going to Sonarpur. He then returned home. His mother called his sister at Sonarpur over telephone and came to know that prosecutrix did not

reach Sonarpur. Subsequently, prosecutrix informed that she was abducted by the appellants.

20. In cross-examination he testified that appellants filed criminal case against them after the incident alleged in this case. Appellants are their neighbours. He could not say the place wherefrom prosecutrix was recovered. They took custody of the prosecutrix from Court.

21. PW3, a resident of Neruli Abad, knew all the appellants as well as complainant (PW1). He heard from neighbours that the daughter of complainant left the house and went to other place. He knew nothing else.

22. PW4 is another brother of prosecutrix. He stated that his brother (PW2) accompanied prosecutrix till she boarded on bus at Malancha. After five (5) months Gautam Patra came to Minakhan Police Station along with prosecutrix. His parents took custody of the prosecutrix from Basirhat Court. Later, prosecutrix was married to one person of Champahati village.

23. In cross examination he further confirmed that prosecutrix boarded on a bus and started to proceed alone. He could not say as to involvement of parents of Gautam Patra in the alleged offence of kidnapping.

24. Prosecutrix (PW5) is a married woman who got married six years back. She stated that **while she tried to board on a bus appellants forcibly kidnapped her and took her away in a Tata Sumo Car.** She was taken to different places and confined for the period of Six months till she was produced before Minakhan Police Station. Even appellant Gautam Patra committed sexual intercourse with the prosecutrix forcibly.

25. During cross-examination **she identified her signature on the affidavit (exhibit A) sworn by her.** She further stated that **she boarded on bus to go to Kolkata and there was no person surrounding that place. At the same time she stated that she was taken away by the appellants from the place where she tried to board on the bus.**

26. Some factors appearing on oral testimony of witness are to be taken into consideration at the time of appreciation of evidence. Those factors are – contradictions, inconsistencies, exaggerations, embellishment and contrary statements by two or more witnesses on one and the same fact. Minor discrepancies do not corrode the credibility of a case but material discrepancies do so.

27. Though doctrine of *falsus in uno, falsus in omnibus*, is not applicable in our law but at the time of appreciation of evidence it is the duty of the court to separate grain from chaff and appraise in each case as to what extent the evidence is worthy of acceptance. If separation cannot be done, the evidence has to be rejected *in toto*. It is now settled that if the testimony of a sole witness is found reliable on touchstone of credibility, accused can be convicted on the basis of such sole testimony.

28. To eschew prolixity, I must not delve into the charge under Section 376 of IPC which was found not proved by any substantive evidence. That apart, nothing apparent from record that after alleged recovery prosecutrix was ever produced before any Medical Officer for her examination.

29. From the evidence of PW1 and PW3 (mother & elder brother of prosecutrix) it appears that after missing of prosecutrix they came to know, on inquiry, that appellants abducted prosecutrix. But, according to PW2 (another younger brother of prosecutrix) who stated in his cross-examination that he came to know about kidnapping from the prosecutrix.

30. Therefore, factum of receiving information about kidnapping is doubtful.

31. PW2, younger brother of prosecutrix, stated that he accompanied prosecutrix up to Neruli Bazar wherefrom prosecutrix boarded on an engine van for Malancha Bus Stand whereas PW4, elder brother of prosecutrix testified that PW2 accompanied prosecutrix up to Malancha Bus Stand and returned while prosecutrix boarded on bus.

32. So, factum of accompanying prosecutrix is also in doubt.

33. From the evidence of prosecutrix, PW5, it appears that in examination in-chief she stated that she was abducted by the appellants while she was trying to board on bus but, in cross-examination **she stated that she boarded on the bus and there were few passengers in the bus but there was no person in the place wherefrom she tried to board on the bus.**

34. Now, I am in a fix. Which one of the two versions of PW5 is true – either she was abducted by the appellants while she was trying to board on bus **or** she was dragged out of the bus for kidnapping by the appellants without any counter action of the passengers.

35. On the contrary, evidence of PW3 sounds a rumour among the neighbours that prosecutrix left her father's house.

36. Regarding age of the prosecutrix prosecution relied on transfer certificate of school (exhibit 2) which was produced by PW1 (mother of prosecutrix) before the Court and it was admitted by the Learned Court. But, reliability of the document (exhibit 2) has been jiggled by the cross-examination of PW1 (mother of prosecutrix) who stated that at the relevant point of time her daughter i.e. prosecutrix was 18 years old which was duly ratified by the admitted fact of settlement of marriage of the prosecutrix prior to alleged incident of abduction. Thereby, issue of age cannot be said to have been established beyond doubt.

37. Learned Trial Judge, did not rely on affidavit (exhibit A) on the ground that notary public was not examined and no suggestion was put to the prosecutrix regarding marriage of prosecutrix with the appellant Goutam Patra.

38. Ld. Trial Judge, in my humble opinion, overlooked the evidence of PW5 (prosecutrix) who specifically stated as quoted below:- ***“This is my signature appearing in the affidavit dated 20.06.2011”*** Ld. Judge also failed to spot the evidence

of prosecutrix who never challenge the execution of affidavit by the notary duly authorized under Section 297 of CrPC. Therefore, contents of the affidavit (exhibit A) showing extreme love, marriage, voluntariness further jerk the prosecution case of abduction/kidnapping.

39. It is now trite law that though sole testimony of the victim can be relied upon, but in the same time her version must be trustworthy and unblemished and her evidence should be of a very high quality, the same should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such witness. What would be more relevant is the **consistency** of the statement right from the starting till the end namely, at the time when witness makes the initial statements and ultimately before the Court. It should be natural and consistent with the case of prosecution qua the accused. There should not be any prevarication in the version of such a witness.

40. Hon'ble Apex Court in the catena of judgements has held that the witness should be in a position to withstand the

cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of each. Such a version should have co-relation with each and every one of other supporting material such as recoveries made, the manner of offence committed, the scientific evidence and the expert opinion. The said version should be consistently matched with the version of every other witness.

41. But, in the case at hand, there is no scope to find out the consistency between initial statement and ultimate due to non-examination of Investigating Officer. That apart, inordinate delay in recording statement of prosecutrix under Section 164 of CrPC remains unexplained, that too, while entire prosecution case is based on related witnesses not supported by only independent witness (PW3).

42. Ratio of ***Mafat Lal*** (supra), in strict sense, is not applicable in this case where there was an effort to suppress the **relationship** between appellant Goutam Patra and the prosecutrix whose minority cannot be said to have been determined conclusively.

43. However, by perusal of the evidence of prosecutrix (PW5), the same does not inspire confidence on this Court that the appellants/ accused have committed forceful abduction. There are not only material contradictions in her (PW5) evidence, but also the manner in which the alleged incident has taken place as per version of the prosecutrix, is not **believable**.

44. In the aforesaid view of the matter, in my opinion, the Trial Judge, has erred in convicting the appellants for the charges labelled against them. Accordingly, I addressed all the contentious issues of this appeal. Therefore, I proceed to pass the following:-

Order

- i.** The appeal filed by the appellant is allowed.
- ii.** The judgement of conviction dated 21.12.2020 and order of sentence dated 22.12.2020 passed in Sessions Case no. 13 (7) 2017/ Sessions Trial No. 1 (9) 2018 by the Additional Sessions Judge, (Fast Track) 3rd Court, Basirhat, North 24 Parganas is hereby set aside.
- iii.** All three appellants are found not guilty and acquitted.
- iv.** Appellant Dulal @ Palan Patra and Radharani Patra be set at liberty at once though bond already submitted by them

shall remain in force for six (6) months in terms of Section 437A of the CrPC.

v. The appellant Goutam patra also be set at liberty at once if he is not required to be detained in connection with any other case, subject to furnishing a bond of Rs. 10,000/- with one registered surety of like amount to the satisfaction of Ld. Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas, which shall remain in force for the period of six (6) months from date in terms of Section 437A of the CrPC.

vi. The appeal being no. CRA 06 of 2021 along with application, if there be any, stand disposed of accordingly.

vii. Ld. Trial Court record be transmitted back immediately.

viii. All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

ix. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]