

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA (SB) 135 of 2022

Dugu Saren @ Budhrai Saren

-vs.-

The State of West Bengal

Mr. Soumyajit Das Mahapatra

...For the Appellant

Mr. S.G. Mukherjee, Ld. P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Datta.

... For the State.

Mr. Dipanjan Dutt

... For the de facto complainant.

Reserved on : 23.11.2023

Judgment on : 22.12.2023

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 30.08.2022 and 31.08.2022 passed by the learned Additional Sessions Judge, 2nd Court, Jhargram in Special Trial No. 04(02)22 arising out of POCSO Case No. 20/2021 wherein the appellant was convicted under Section 363 of the Indian Penal Code and sentenced to suffer imprisonment for 3 (three) years 6 (six) months and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment for 2 (two) months.

The genesis of the present case being Gopiballavpur Police Station case no. 104/2021 dated 19.11.2021 was on the basis of a complaint by ‘Y’ father of the victim with the Inspector-in-charge, Gapiballavpur P.S., Jhargram. The allegations made by ‘Y’ (hereinafter referred to as the complainant) were to the effect that his daughter namely ‘X’, aged about 14 years 1 month (date of birth- 16.10.2007) was a student of Class-VI of Nirmal Hriday Ashram Girls’ School. On 18.11.2021 she disappeared from home at about 2.00 pm and after searching the complainant came to know that Dugu Saren son of Late Bishu Saren took his daughter away with bad intention and as such he requested the police authorities to take immediate action. On receipt of such complaint Gapiballavpur PS case No. 104/21 dated 19.11.2021 was registered for investigation under Section 363/366 of the Indian Penal code and the investigating agency on completion of investigation submitted charge-sheet under Section 363/366/376 of the Indian Penal Code and Section 6/8 of Protection of Children from Sexual Offences Act, 2012. The contents of the charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon 11 witnesses and number of documents, while defence did not produce any evidence but attempted to rebut the prosecution case by way of cross-examination. The 11 prosecution witnesses who were examined are PW1, victim girl ‘X’; PW2, ‘A’, grand-mother of the victim girl; PW3, ‘B’, grand-father of the victim girl; PW4, Dr. Pulak Ranjan Mahata, Medical Officer of Jhargram District Hospital; PW5,

Dr. Debarati Saha, Medical Officer of Gopiballavpur Multi Super Speciality Hospital; PW6, 'Y', complainant and father of the victim girl; PW7, Sudip Banerjee, Inspector of Police, Gopiballavpur police station; PW8, 'Z', mother of the victim girl; PW9, 'C', uncle of the victim girl; PW10, 'D', maternal uncle of the victim girl and PW11, LSI, Tanushree Biswas, Sub-inspector of Police and the Investigating Officer of the case.

PW1, 'X', victim girl in her evidence stated that the incident took place five months ago and on the date of the incident she was at her house when the accused/appellant called her over phone to come at Paraghutu Chawk. She went accordingly when the appellant asked her to sit on his motorcycle, when she was reluctant, however, the accused told her that if she did not sit on his motorcycle he would kill her. As such she was compelled to sit on his motorcycle and the accused took her to his house and kept her in a room, thereafter forced her to remove her wearing apparels. After removing her clothes the accused started touching her body to which she raised objection. The accused thereafter took her photographs and told her that if she did not allow him to touch her body he will circulate such photographs in social media. She refused to give permission when the accused told her if she did not allow to touch her body he would kill her. The accused inserted his male organ in her vagina when she felt pain and started shouting. At that time the accused threatened her that if she shouted he would kill her. That night she was kept at that room when the accused had sex with her once (on that night) and on the following morning police recovered her from the said house by preparing a

paper where she signed. She identified her signature on the recovery memo which was marked as Ext.1/1. She was taken to the police station and produced at the hospital where she was medically examined by the doctor. She signed and her LTI and RTI was taken on medical examination report. She identified her signature on the medico-legal examination report which was marked as Ext.2/1. Police seized her wearing apparels by preparing seizure list. She identified her signature on the seizure list dated 19.11.2021 which was marked as Ext.3/1. She stated that she could have identified the clothes if the same was produced before her. She thereafter narrated that she gave her statement before the learned Magistrate who wrote the same as per her narration which was read over and explained to her and she signed the same. She identified the said statement and her signatures. She identified her statement under Section 164 Cr.P.C. which was marked as Ext.4. She also stated that she gave statement to the police and narrated the fact of the incident to her parents. She identified the accused Dugu Saren in Court.

PW2 is 'A', who stated that the victim is her grand-daughter. According to her the incident took place on 18.11.2021 at about 2.00 pm when she noticed her grand-daughter is not in the house. She searched at different places but could not find her and over telephone she inquired from her parents (of the victim girl) and the parents of the victim girl replied that she was not with them. On that day victim girl was not found at any place and on the following day her son i.e. father of the victim girl informed the police, thereafter the police recovered her grand-daughter and produced her before the Court.

From the Court the victim girl was returned and on 21.11.2021 she was brought back to their house. After returning home the victim girl stated the fact of the incident to them that one Dugu Saren of Mahulboni took her to a room and removed her clothes and took her photographs and did sexual intercourse with her.

PW3 is 'B', grand-father of the victim girl who also stated that the incident took place on 18.11.2021 at about 2.30 pm when his grand-daughter went to play and from the said place she was missing. He searched her at different places but could not find her. He deposed that his wife informed the matter of his grand-daughter missing to the mother of the victim girl which was further informed to his son. His son informed the police authorities and thereafter police recovered his grand-daughter from village Mahulboni from the house of Dugu Saren and produced her before the Court and from Court the victim girl was returned and she was taken to home. After returning home victim girl stated the fact of the incident to his wife and his wife told him that Dugu Saren kidnapped her grand-daughter and did sexual intercourse with her.

PW4, Dr. Pulak Ranjan Mahata stated that he was the Medical Officer at Jhargram District Hospital and on 21.11.2021 in connection with Gopiballavpur PS case No. 104/21 dated 19.11.2021 he examined one Dugu Soran alias Budhrai Saren, aged about 23 years. On examination he found that there was nothing to suggest that the accused is incapable to perform sexual

intercourse. He prepared a report after medical examination which was in his own hand writing and signed by him with his official seal. He identified the signature of the accused Dugu Saren on the report. The Medical Examination report dated 21.11.2021 was marked as Ext.5.

PW5 is Dr. Debarati Saha. She was Medical Officer at Gopiballavpur Multi Super Speciality Hospital. On 19.11.2021 in connection with Gopiballavpur PS case no. 104/21 dated 19.11.21 she examined the victim girl aged about 14 years, who was brought and identified by lady constable of Gopiballavpur PS. Before examination she obtained the consent of mother of the victim for medical examination of the victim girl. Victim girl and her mother signed the same. On examination she found no visible sign of forcible intercourse. On physical examination no external injury on her private organ/other parts, or any foreign body was detected on her private parts, vaginal swab and rectum swab was handed over to the attending constable. She further stated that according to the patient she was forcibly taken away on 18.11.2021 and went to the house of the accused where his brother and his wife was present at that place and one episode of sexual intercourse which was forced on her without her consent at night. She prepared the report regarding said medical examination. This is the said medical examination report bearing her hand-writing, signature and date with official seal. The witness also stated that there might be no mark of injury if the patient is subjected to sexual intercourse for minimum.

PW6, 'Y' is the father of the victim girl. He deposed that the victim girl is 14 years 5 months and the incident took place on 18.11.2021 at about 2.00 pm when his daughter was missing at home which is situated at village Sonarimara. At that time his daughter/victim girl was residing with his parents at their house at Sonarimara. His wife informed the issue relating to their daughter missing. At the relevant point of time he was in school after the school closed and when he returned from his school his wife met with him at Medinipur where she used to work. He went to Sonarimara on 19.11.2021, after reaching at their house at Sonarimara he searched at different places but could not find his daughter. Then he came to know that Dugu Saren took away his daughter. Then he went to the police station and lodged FIR. His brother-in-law wrote the complaint as stated by him which was read over/explained and thereafter signed by him. He identified the written complaint and his signature. He also identified the signature of his brother-in-law Prithiraj Saren on the complaint. The written complaint was marked as Ext.7. He also signed the formal FIR and identified his signature on the formal FIR which was marked as Ext.8/1. He further stated that police seized the birth certificate of his daughter by preparing seizure list where he signed. He identified his signature on the seizure list which was marked as Ext.9/1. The original birth certificate was returned to him after submitting jimmanama. He identified his signature on the jimmanama which was marked as Ext.10. He submitted the original birth certificate along with xerox copy of birth certificate of his daughter, after comparing with the original birth certificate, xerox copy of birth

certificate of his daughter was marked as Ext.11 and the original birth certificate was returned to the witness. He narrated that the police recovered his daughter from the village Mahulboni. After returning home his daughter informed and narrated that Dugu Saren took her away forcibly and kept her in a house at Mahulboni and also did sexual co-habitation with her and also took obscene photographs. However, he stated that he never saw Dugu Saren.

PW7 is Sudip Banerjee, Inspector of police, Gopiballavpur Police Station. He deposed that on 19.11.2021 he received a written complaint from Ganesh Mandi and on the basis of the same he registered Gopiballavpur PS FIR No. 104/21 dated 19.11.2021 under Section 363/366 of the Indian Penal Code. He filled up the formal FIR and identified the formal FIR which was written in his own hand writing and signed by him with his official seal and date. The complainant also signed on the formal FIR. He entrusted the case to Lady Sub-inspector Tanushree Biswas for investigation. He identified the written complaint which was received by him and there was signature and date on the written complaint, which was identified by him and marked as Ext.7/1.

PW8, 'Z' is the mother of the victim girl who deposed that the incident took place on 18.11.2021 when the victim girl was staying at her matrimonial home situated at village Sonarimara within the jurisdiction of Gopiballavpur Police Station. Her mother-in-law informed her over telephone when she was working at Nirmal Hriday Ashram situated at Midnapur, that her daughter was missing and she could not be found. She informed her husband over phone

with a request to come at her working place. When her husband came there she informed him about the incident and on 19.11.2021 both of them went to her matrimonial home at Sonarimara and her mother-in-law again told her that her daughter was missing. Both of them went to the police station and her husband lodged FIR. Police recovered her daughter and produced her at the hospital where her daughter was medically examined and she gave her consent for medical examination of her daughter. She identified her handwriting in respect of consent along with her signature on the medical examination report which was marked as Ext.2/2. Her daughter was also produced before the learned Court and the learned Judicial Magistrate recorded her statement. She thereafter returned to the house. After returning home her daughter divulged that Dugu Saren took her away from Paraghutu Chawk by his motorcycle to his own house. At his home the accused did sexual co-habitation and took her naked photographs. Her daughter resisted the accused for sexual co-habitation when the accused threatened her, that if she resisted then the photographs would be uploaded and transmitted through the internet. She identified Dugu Saren in Court.

PW9, is uncle of the victim girl, who deposed that the victim girl is daughter of her cousin, as on 18.11.2021 the victim was missing, they went for searching her at different places but could not find her. Mother-in-law of his cousin informed over telephone about missing of the victim to her and on 19.11.2021 her cousin and her husband came to their house and they went to

the police station and lodged the FIR. The victim girl was recovered from the house of Dugu Saren, however, he did not know Dugu Saren.

PW10 is the maternal uncle of the victim girl. He deposed that the incident took place on 18.11.2021 when the victim girl was missing from her house and after searching for her at different places she could not be found. On 19.11.2021 his brother-in-law/father of victim informed to the police station in writing and as per instruction of his brother-in-law he wrote the complaint. He read over and explained to his brother-in-law and after understanding the same he signed it. He identified the written complaint which was written in his own hand writing. He also identified his signature and the signature of his brother-in-law in the written complaint which was marked as Ext.7. He further deposed that police recovered the victim girl from the house of Dugu Saren. He came to know from his brother-in-law that Dugu Saren raped the victim girl. The accused threatened the victim girl that if the victim girl did not allow him to commit sexual co-habitation he would upload her picture in the social media. He however stated that he did not know Dugu Saren.

PW11 is the Sub-Inspector of Police at Gopiballavpur at the time of incident who was endorsed Gopiballavpur PS case No. 104/21. She stated that after perusal of the FIR and the complaint as also the formal FIR she along with police force left for village Sonarimara. She had been to the place of occurrence and prepared rough sketch map of the place of occurrence with

index in two separate sheets. She identified the said rough sketch map and index which was marked as Ext.12 and Ext.12/1. She also examined the available witness, recorded their statements under Section 161 of Code of Criminal Procedure. On 19.11.2021 she received the birth certificate of the victim girl by preparing the seizure list, she identified the seizure list which was in her hand writing and signed by her, the same was marked as Ext.9. The birth certificate was subsequently returned by furnishing jimmanama. She stated that the victim girl was recovered on 19.11.2021 from the house of the accused Dugu Saren situated at village Muhulboni by preparing recovery memo. The recovery memo of victim was prepared by her and signed by her which was marked as Ext.1. She stated that accused Dugu Saren was arrested from the same place by preparing arrest and inspection memo which was prepared by her in her own hand writing and signed by her. The same was marked as Ext.13 and Ext.13/1 respectively. She produced the victim girl in the hospital for medico-legal examination. After completion of medico-legal examination she collected the medico-legal examination report. She seized vaginal swab and rectum swab of the victim and sent those articles to FSL for examination. On 20.11.2021 she forwarded the accused Dugu Saren to Court and also advanced prayer for recording statement under Section 164 Cr.P.C. of the victim girl. She collected the statement of the victim girl from Court and also collected the medico-legal examination report of the accused. She advanced prayer for adding Section 376 IPC and Section 6/8 of POCSO Act which was allowed by the Court. All the exhibits were sent to the FSL for

examination and after completion of investigation and obtaining necessary permission from superior authority she submitted charge-sheet no.110/2021 dated 29.12.2021 under Section 363/366/376 of IPC and Section 6/8 of POCSO Act against the accused Dugu Saren. She identified the accused in Court.

Mr. Mahapatra, learned Advocate appearing for the appellant submitted that the case is based on solitary statement of the victim and the evidence of the rest of the witnesses are hearsay in nature. According to the learned Advocate the statement of the victim girl was recorded under Section 161 of Cr.P.C. on 19.11.2021 by the Investigating Officer wherein she admitted her acquaintance with the appellant. On 18.11.2021 she admitted to have her own volition when she went to meet the appellant. The medical examination of the victim girl was conducted in presence of her mother wherein the fact relating to sexual assault was narrated, although the doctor could not detect any injury on the victim girl and even on the next day when she was produced before the learned Judicial Magistrate, her statement under Section 164 of the Code of Criminal Procedure did not state anything with regard to she being ravished or of any forceful sexual intercourse. The victim improved her statement after five months of the incident when she deposed before the Court and a new picture was portrayed that she was enticed/allured and forcefully taken away from Paraghutu Chawk. She also narrated before the Court of being ravished and having suffered injuries on her private parts. Learned Advocate drew the attention of the Court to the version which was subsequently

deposed/presented before the trial Court which is an exaggerated version and as such questioned the reliability of such witness to come to a finding of guilt. It was pointed out on behalf of the appellant that it was the victim who give a different version which was inconsistent with the initial version of the victim. The written complaint on the basis of which the FIR was registered was at the instance of the father and other relations of the victim, where the facts were embellished and purposely distorted for giving a colour of much more heinous offence which do not match with the initial version of the victim. Learned Advocate drew the attention of the Court to the medical report which is marked as Ext.6 and also referred to the evidence of the doctor (PW5) namely, Dr. Debarati Saha who conducted the medical examination. Learned Advocate submitted that if the evidence of the doctor and the Ext.6 i.e. the medical report is taken as a whole there is no material to suggest that the victim was sexually abused by the present appellant and as the mother was present the doctor wrote in her report that *"She was forcibly taken away on 18/11/2021 and went to his residence where his brother and wife were present at that place and one episode of sexual intercourse which was forced on her without her consent at night."* Learned Advocate by referring to the oral evidence of PW5 stated that in cross-examination the doctor was confronted on the issue of forceful sexual intercourse and she categorically stated that if there is forcible sexual intercourse for minimum with a minor girl, there will be injury mark. The said doctor in her cross-examination stated that she did not find any

injury of labia majora and labia minora and the patient was under menstruation and as such no internal examination could be conducted.

Emphasis was laid on the fact that the parents, relations and guardians of the victim girl tutored her to depose in a manner which could not be related to initial set of events and the girl being of tender age succumbed to the pressure of such seniors. It was further contended on behalf of the appellant that the cross-examination of the investigating officer would also reflect variation/exaggeration made by the victim in her statement, as the investigating officer in her cross-examination in Court stated that at the time of recording the statement of victim under Section 161 Cr.P.C. she did not say that the appellant threatened her or he would publish her photographs in social media if she did not allow him for sexual cohabitation. Further the statement of the victim according to the investigating officer reflected that there were three to four persons in the house where she was kept and the victim did not inform those persons that the appellant had forcefully taken her and that she was forced to remove her clothes. She even did not shout when she was asked to remove her clothes. The manner in which the victim narrated the incident of sexual intercourse is also questionable as according to her blood oozed out while none of her garments which were seized reflected stain of blood. Learned Advocate for the appellant argued that because of the case being tried under the relevant provision of the POCSO Act defence had to cross-examine by following relevant provisions of law and as such majority of the questions in course of cross-examination were asked by the learned Special

Court who communicated such questions in his own manner to the victim. Learned Advocate relied upon the series of judgments, which are as follows:

Shyam v. State of Maharashtra, 1995 SCC (Cri) 851 (para 2 & 3); State of Rajasthan v. Babu Meena, (2013) 4 SCC 206 (para 5, 10 & 11); Bibhishan v. State of Maharashtra, (2007) 12 SCC 390 (para 6); Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92 (para 7, 8, 9 & 12); Santosh Prasad v. State of Bihar, (2020) 3 SCC 443 (para 5.2, 5.3, 5.4, 5.4.1, 5.4.2 & 6); Dola v. State of Odisha, (2018) 18 SCC 695 (para 6, 7, 8, 9, 35 & 36); Belal @ Radheshyam Mondal v. The State of West Bengal, 2016 SCC OnLine Cal 6253 (para 9, 11, 14, 17, 18 & 19); Radhu v. State of M.P., (2007) 12 SCC 57 (para 2, 6, 12, 13 & 16); Raju v. State of M.P., (2008) 15 SCC 133 (para 8, 9, 10, 11 & 12).

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor appearing for the State opposed the contention which has been advanced by the learned Advocate for the appellant and submitted that even if the defence version is accepted to be true the Court cannot ignore the factum of the victim girl being a minor, which was substantiated by oral evidence as well as documentary evidence. To that effect learned Public Prosecutor referred to the evidence of the father of the victim girl as also the birth certificate which has been marked as Ext.11. Relying upon the relevant part of the evidence of PW6, learned Public Prosecutor emphasised the following part: *“At present age of the victim girl is 14 years 05 months as on today. Incident took place on 18/11/2021 at about 2.00 pm.....”* Learned Public Prosecutor also referred to the relevant part of the

evidence of the investigating officer, PW11 which stated as follows: *“Victim girl was recovered on 19/11/2021 from the house of accused Dugu Soren situated at village Muhulboni by preparing recovery memo. This is the said recovery memo of the victim girl bearing my hand writing and signature (recovery memo is marked as Ext.1).”*

Drawing the attention of the Court to the evidence of the aforesaid witnesses it was emphasised on behalf of the State that the victim girl was a minor and she was recovered from the house of the accused. As such the preliminary material required for establishing an offence is satisfied in the present case. There has been no cross-examination on the issue relating to the factum as to how and why the victim girl was recovered from the house of the appellant. In fact, the learned Public Prosecutor criticised the judgment as unnecessary leniency has been shown by the learned trial Court/Special Court while dealing with the issue relating to the victim being recovered from the house of the appellant. Controverting the contention advanced on behalf of the appellant the learned Public Prosecutor submitted that there are definite guidelines for examination of vulnerable witnesses concerned. So far as the other witnesses are concerned, in fact, the investigating officer there is no bar for cross-examination on issues and in fact sufficient contradiction had been taken on behalf of the appellant from the investigating officer but there were no question on the issue relating to the minor being recovered from the house of the accused after one day. According to the State it was incumbent upon the learned trial Court who dealt with the situation as to the purpose for which the

minor aged about 14 years was forcibly taken away by way of enticement/allurement and thereafter she being recovered on the next date at the behest of the police authorities. State emphasised that in this case guilt of the appellant should not be restricted to Section 363 of the Indian Penal Code. Learned Public Prosecutor submitted that this Court would check the chronological series of events regarding manner in which in respect of some of the offences, the learned trial Court has exonerated the accused and limited the conviction to only Section 363 of the Indian Penal Code.

I have considered the submission advanced on behalf of the appellant as well as that of the State, I have taken into account the reasons which have been assigned by the learned trial Court while the trial Court acquitted the appellant from the charges under Section 376 of IPC and Section 6/8 of POCSO Act. The reasons which were assigned by the learned trial Court were that under Section 164 of Code of Criminal Procedure the statement of the victim girl did not refer to any sexual assault/rape; the investigating officer at the time of cross-examination deposed that the victim in her statement under Section 164 Cr.P.C. did not state that Dugu Saren committed rape upon her/sex with her; lastly according to the learned trial Court PW5, doctor on her examination assigned three reasons. On examination the doctor found: (a) no sign visible for forcible intercourse on physical examination, (b) no external injury on her private organ/other parts, (c) no foreign body detected in her private parts. As such the learned trial Court arrived at its finding that the

prosecution has failed to prove sexual offence under Section 376 of IPC and Section 6/8 of the POCSO Act so far as the accused is concerned.

In appeal, State has referred to the provisions of Section 366 of the Indian Penal Code and tried to emphasise that the learned trial Court should have granted reasons for acquitting the appellant under Section 366 of IPC, as according to the learned Public Prosecutor the deposition of the victim reflects that she was sexually abused.

In Kavita Chandrakant Lakhani –Vs. – State of Maharashtra & Anr. reported in (2018) 6 SCC 664 the following paragraphs require consideration while holding a person guilty under the provisions of Section 366 of the Indian Penal Code. The said paragraphs are set out as follows:

“16. *In order to constitute the offence of “abduction”, a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this section. The volition, the intention and the conduct of the accused determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse.*

17. *Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced*

the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the court cannot hold the accused guilty and punish him under Section 366 IPC.

21. *This Court has time and again held that mere abduction does not bring an accused under the ambit of Section 366 IPC. It must be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.”*

It has been the consistent view of the Hon’ble Supreme Court that an offence under Section 363 of IPC will not automatically lead to the finding of guilt under Section 366 of IPC. There must be some materials to come to a conclusion that the victim was seduced to illicit intercourse and/or the accused knew it to be likely that she may be seduced to illicit intercourse, as a

result of such kidnapping. The finding of the learned trial Judge that the victim for the first time introduced the facts relating to she being sexually abused were for the first time in Court and such facts were never stated to the investigating officer or to the Judicial Magistrate under Section 164 of the Code of Criminal Procedure which raises a doubt regarding the veracity of the fact of introducing incidents relating to sexual abuse.

As such in an appeal preferred by the accused and on an appreciation of the materials placed before this Court, I am unable to satisfy myself in respect of the arguments advanced by the State in respect of any offence being committed under Section 366 of IPC. However, fact remains that the victim girl was 14 years 1 month at the time of the incident and the consistent version is that she was induced and coerced by the appellant and taken to his house. To that effect the evidence of the prosecution witnesses were consistent, as she was recovered from the house of the appellant in the next morning.

Consequently, the conviction under Section 363 of the Indian Penal Code as imposed by the learned Trial Court in Special Trial No. 04(02)22 arising out of POCSO Case No. 20/2021 is just and proper and as such the same is not interfered with and is hereby affirmed.

Accordingly, the appeal being CRA (SB) 135 of 2022 is dismissed.

Pending connected applications, if any, are consequently disposed of.

If the appellant is on bail his bail bonds stand cancelled and he is directed to surrender before the learned trial Court to serve out the sentence.

Department is directed to send back the Lower Court Record to the learned trial Court being learned Additional Sessions Judge, 2nd Court, Jhargram within a fortnight from date and communicate this judgment for further reference.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)