

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 450 of 2007

Hapiz Zakir Hossain

-Vs-

The State of West Bengal

For the Appellant : Mr. Kusal Kumar Mukherjee
Mr. Eshita Aich

For the State : Ms. Zareen N. Khan
Mr. Ashok Das

Heard on : 09.10.2023, 07.12.2023

Judgment on : 07.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23.07.2007 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Paschim Midnapore, in Sessions Trial Case No. 15 of August, 2006 arising out of Kotwali Police Station Case No. 34 dated 13.02.2004, convicting the appellant under Section 366 of the Indian Penal Code and sentenced the appellant to suffer simple imprisonment for three years and to pay a fine of Rs. 10,000/- in default to simple imprisonment for one year.
2. The prosecution case was/is as it stands from the judgment and order dated 27.07.2007 that on 08.02.2004 at about 9 a.m. the daughter of the defacto complainant known by the name Taslim Khatun alias Jhamu left the house

stating that she is going to Barabazar. But on that date, said Taslima did not return home for which on 08.02.2004 the defacto complainant lodged G.D. bearing No. 494 about missing of his daughter Taslim. From the written complaint, it is also revealed that defacto complainant searched for his missing daughter and came to know that the appellant who is living in the house of Sk. Nashim, has kidnapped his daughter. On enquiry, he came to know that the appellant is performing work or giving lesson Holly Koran to different houses and he used to give Joributi. For this reasons the appellant has a free access to the area of the defacto complainant and he had also free access to the houses of that area. The daughter of the defacto complainant became acquaintance with the accused person through her friend Puspita Samanta and that Puspita brought the accused to his house. Later on, he came to know that the appellant took his daughter Taslima at the State of Orissa at Chandipur and a telephone was received in the adjoined house of the defacto complainant. Thereafter he made a telephone and came to know that the accused kept confined his daughter in a hotel.

3. On the basis of the aforesaid written complaint a First Information Report was drawn up being No. 34 for alleged offence punishable under Section 366/376 of the Indian Penal Code.
4. After investigation charge sheet was submitted before the Learned Chief Judicial Magistrate Midnapore and after taking cognizance and supply copy to the appellant case was committed to Learned Sessions Judge, Paschim Midnapore.

5. The Learned Sessions Judge, after receiving case records transferred the case to the Learned Additional Sessions Judge, 1st Fast Track Court, Paschim Midnapore and Learned Judge on 18.10.2006 framed charge under Section 366/376 of the Indian Penal Code, to which the appellant pleaded not guilty and claimed to be tried.
6. The prosecution to prove its case examined 10 witnesses and exhibited certain documents.
7. Perused the written notes of argument filed by the Learned Advocate for the appellant.
8. Heard the submission of the Learned Advocates for the appellant as well as the State. The Learned Advocate for the State stressed by the evidence of PW-4 and PW-5 emphasizing that the victim was last seen together with appellant according to their evidence.
9. A circumsppection of the prosecution witnesses revealed as follows:
 - i. PW-1 in his deposition stated that Taslima Khatun to be his full daughter. At present she was aged 28 years old and she was a part time teacher of Mission Nursery School. He know the accused person. Puspita Samanta was the friend of his daughter. That Puspita Samanta used to come to his house. Puspita Samanta brought the accused person to his house, Puspita Samanta brought the accused person as he was an expert in giving Tabich and Jaribhuti so that a marriage could be arranged at any time. The accused person also used to supply medicines. In the month of February 2004 his daughter went to Barabazar but on that day his daughter did not return home. Up to

evening he searched for his daughter but she was not found. For which he lodged a missing diary at the Kotwali P.S. On 12.02.04 his daughter made a telephone to him from Chadipur and stated to him that the accused person abducted her and kept her confined in the Chandipur Lodge. On getting such news he lodged information at the P.S. The written complaint was written by Mrityunjay Ghosh as per his instruction. Thereafter he put his signature. Entire written complaint was marked as exhibit 1. His son with the help of the police recovered his daughter and brought her to the P.S. Thereafter his daughter was forwarded to the court. Subsequently he took the custody of his daughter from the court. After taking custody of his daughter, his daughter stated to him that the accused person administered medicines.

- ii. PW-2 in his deposition stated that he was a resident of Sepoybazar P.S. Kotwali. Taslima was his full elder sister who was a part time teacher at mission nursery school. At present she was unemployed. He knew the accused person who, used to supply the Ayurvedic medicines, Tabich to any person so that any unmarried lady may get service and her health would be fit. Puspita Samanta was a friend of his elder sister. He stated to his sister that if she would take any Tabich, her service will be permanent and in that regard he further stated that the accused person was well acquainted with such fact. On 08.02.04 his elder sister went to Barabazar at morning 9 a.m., but till evening she did not return to their home for which they went

searching for his elder sister. Thereafter his father lodged a missing diary at Kotwali P.S. He came to know over telephone through his elder sister that she has been confined at Chandipur and in a vacant residence. After knowing such fact his father lodged a written complaint at the P.S. Thereafter with the help of police they recovered his elder sister. His elder sister was forwarded to the court. Thereafter she was taken into custody. His elder sister stated to him that she was confined in a room and her mind was otherwise. The accused person wanted to marry her but she did not agree to the proposal. Further that he was enticed by the accused person. He came to know from his friend Tapas Nandi that he saw his elder sister talking to another unknown person.

- iii. In his cross-examination PW-2 stated that the Barabazar of Midnapur was busy and crowded place. The Midnapur Bus Stand was also busy place. He was examined by the I.O., on 12.02.04. He narrated to the fact with Daragababu that his sister telephoned them. He also stated to the Daragababu that his friend Tapas Nandi saw his elder sister at the bus stand at 9 a.m.
- iv. PW-3 in her deposition stated that PW-1 was her husband. She was a resident of Sepoybazar. Taslima Khatun was her elder daughter. She was unmarried. She was a part time school teacher of Mission Nursery School who was not in service. The accused was known to him. The accused was married and he has 2 sons and 1 daughter. The accused person was in habit of giving Maduli, Tabich etc., and he also gave the

assurance that the service or marriage will be effected by taking Tabich or Maduli. Puspita Samanta was the friend of her daughter. The accused came to her house with Puspita and he assured her daughter with her temporary service at the Mission Nursery School will be permanent if she takes Tabich, Maduli. The accused person also make Ghar Bandha. The incident took place on 8.2.04. On that day her daughter went to market. As her daughter did not return to her home. She was in search of her daughter. Her husband lodged a missing diary at the P.S. as her daughter did not return even after evening. On 12.2.04 her daughter made a telephone to her neighbour's house and stated that she was at Chandipur with accused Jakir. Thereafter her husband lodged a written complaint at the P.S. and with the help of the police her daughter was recovered. Her daughter stated to her that she was raped by the accused and wanted to sell her. Her son and one son's friend went to Chandipur along with the police for recovery of her daughter. At that time when her daughter returned to her home she was in depressed condition. The accused person at the market gave chocolate and enticed her and took her to Chandipur. Such fact was narrated by her daughter to him.

- v. PW-4 in his deposition stated that he was a resident of village Kuikota under Midnapur Municipality. He also knew Taslima Khatun and PW-2 Sk. Kayum. Sk. Kayum was his classmate. He had friendship with Sk. Kayum as such he used to the house of PW-2 for which his elder sister Taslima Khatun was known to him. On 08.02.04 at about 10

a.m. he found Taslima Khatun along with a person at Midnapur Central Bus Stand who was present in court. After seeing that he went to his service place. On the following day he came to know from Sk. Kahum that his elder sister was missing. At that time he stated to him that he saw his elder sister Taslima Khatun with another person at Midnapur Central Bus Stand at 10 a.m. Sk. Kayum asked him to give the description of the person. He narrated the description of the person. At that time Sk. Kayum stated that the accused person may be that person. Thereafter he came to know from Sk. Kayum that the accused person enticed Taslima. On 12.2.04 he came to know from Sk. Kayum that a telephone came to the neighbouring house of Sk. Kayum that the accused person took Taslima at Chandipur. He along with Sk. Kayum and another person with the help of the police were recovered Taslima from Chandipur. Later on the victim Taslima stated to them that he was brought by the accused. Thereafter he was brought to Midnapur P.S.

- vi. PW-5 in her deposition stated that she was a resident of village Sepoy Bazar, Midnapore. She was unmarried. She is a Graduate. She was a Part-time teacher of Mission School, (Primary Section).

Puspita Samanta was her friend. Her friend Puspita stated to him that there was a Hapij at Patna Bazar. Puspita Samanta further stated to him that if she go to the Hapij for taking help for her permanent service, he could afford a Tabij. On hearing such information, she along with Puspita went to that Hafij. When she went to that Hafij at

Patna Bazar, he gave a Tabij-maduli. He also gave some eatable things like chocolate. As acquaintance grew up in such way, the accused used to come to their house. When he came to their house, he made Charbanda and he also gave Tabij to her parents.

On 08.02.04, she went to Barabazar, Midnapore for purchasing sewing materials. When she came out from the shop at that time she met the accused person. At that time he gave a chocolate and advised to swallow it with the help of water, accordingly she swallowed it with water. After swallowing the chocolate, she lost her senses. Thereafter she found that he called a rickshaw. Thereafter the accused took him to Central Bus Stand, Midnapore by rickshaw. Thereafter they boarded a bus. That bus stopped at Belda. From Belda, she along with the accused went to Baleswar by train. At 04:30 p.m. they reached at Chandipur. Accused took her in a room where the accused confined her by locking for 4/5 days. The accused committed rape upon him.

On 12.2.04, she made a telephone to the adjacent house in Midnapore at the house of Suprobhat Dey. Wife of Suprobhat bubu received the telephone and on her request, she called her mother. She narrated the fact to her mother and told her to recover her. On the following day, the accused took him to Bhadrak. At Bhadrak, she put a signature on a paper. The accused stated to him that a marriage registry has been held between herself and the accused person. After returning from Bhadrak, police recovered him from Chandipur with the help of her brother and brother's friend.

On way of return after recovery, the accused took some joributi for which he became ill and admitted to hospital. Thereafter police brought himat Kotwali P.S. and forwarded him to court. She made a statement before the learned Magistrate u/s 164 Cr. P.C. That was her signature on the recorded statement, which was marked Ext.2. She was examined by the doctor.

Her brother took her custody and she narrated the fact to her parents. Her friend Puspita will not adduce any evidence in her favour as because he was now mixing with the accused.

(Through court: In the statement u/s 164 Cr.P.C. She stated before the learned magistrate that *“o amar upar kono saririk otyachar koreni”* that means, he did not assault him physically.

- vii. In her cross-examination PW-5 stated that the Tabij which was given by the accused were used to keep in her body all along. The date on which the accused person took him away and when she returned to her home, Tabij was all along. She did not hand over the Tabij to the Darogababu. She did not handover the Maduli which was given to the I.O. She stated to the I.O. that at the time of examination u/s 161 Cr.P.C., that the accused gave him one chocolate. She did not remember whether she stated to the I.O. that the accused gave him chocolate on the first date and acquaintance grown up with the accused. She did not remember whether she stated to the I.O. the matter of Gharbanda by the accused. She stated to the fact of Gharbanda before the learned Magistrate. She stated to the I.O. as

well as to the learned magistrate that on 08.02.04 she went to Barabazar to purchase sewing materials. At that time she did not remember whether she stated to the I.O. that the accused gave a chocolate at Barabazar on 08.02.04 nor she did not remember whether she stated that fact to the learned Magistrate. She did not remember whether she stated to the I.O. or to the learned magistrate that after swallow that chocolate, she became senseless and the accused called a rickshaw and took him to Midnapore Central Bus stand where she boarded a bus. She stated before the learned Magistrate that the accused committed rape upon him against her will. She put his signature in her statement recorded by loamed Magistrate. In the recorded statement, there was no mention that she stated to the learned Magistrate that the accused committed rape upon him.

(To Court: I stated the fact of committing rape by the accused upon me).

After recording statement, it was read over and explained to him and after knowing it correctly written, she put her signature. The witness volunteers - Her mental and physical condition was not sound as the accused gave joributi for which she could not say what was stated before the I.O. and the learned Magistrate.

She did not mention at the time of recording statement u/s 164 Cr.P.C. that she made a telephone in the house of Suprobhat Dey, but the same was stated to the I.O. At that time, she did not remember whether she stated the fact that the accused confined him after

locking. So far she remembers stated to the learned magistrate that the accused obtained his signature in a paper at Bhadrak. She stated to the I.C. that the accused became due to consumption of Joributi, but the said fact was not stated by him before the learned magistrate. She could not say the no. of police of Baleswar district who helped the police of Midnapore. When police recovered him, he signed on paper. That day she did not see any such document. Puspita was her friend from childhood. After recovery she had no talk with Puspita.

- viii. PW-6 in his deposition stated that he was a S.I. of police. At present posted at Kharagpur local P.S. On 13.02.04 he was posted at Kotwali P.S. as S.I. of police. On that date he was the Duty officer at the relevant time at 01:45 p.m. at that time he received a written complaint from one Sk. Kashim. That was the written complaint. After receiving the complaint, he made an endorsement on it. That was that endorsement, marked Ext. 1/17. Thereafter he filled up the formal F.I.R. The formal F.I.R. was written and signed by him, marked Ext. 3. Thereafter he placed the written complaint before the I. C. who made over the case to S. I. Kabita Das for investigation. That was the endorsement of the then I.C. P. Mukherjee. He knew his handwriting and signature Ext.3/1. The endorsement of the I.C. was marked as exbt.-3/1.
- ix. In his cross-examination PW-6 stated that he had no personal knowledge about the matter. He did not do anything about the investigation. He only received the written complaint and filled up the

formal F.I.R. The complaint was written on 12.02.04. He received the written complaint on 13.02.04.

- x. PW-7 in his deposition stated that he was a Judicial Officer, now posted at Alipore as Civil Judge (Junior Division), 1st Court. On 14.02.04, he was posted as Judicial Magistrate, 4th Court, Paschim Midnapore. On that date, as per order of Ld. S.D.J.M., he recorded the statement of the victim Taslima Khatun. On that day, he was in charge of S.D.J.M. The victim was produced and identified by Lady Constable no.474 Mangala Ghosh. He recorded the statement of the V.G. in connection with the instant case. That was his recorded statement. After writing, the statement, it was read over and explained to her. Knowing it correctly written, she put her signature. Before recording her statement, he expressed that she is not bound to make any statement. In spite of that, she made a statement and he recorded her statement., marked Ext.4.

There is no explanation as to the term 'saririk atyachar'. He recorded the statement as per version of the victim girl. The victim girl stated particular word 'saririk atyachar'.

- xi. In his cross-examination PW-7 stated that the victim girl did not state to him at the time of recording the statement, that she was raped by the accused person. At the time of giving statement, the victim was mentally and physically fit.
- xii. PW-8 in her deposition stated that he was S.I. of police now posted at Kotwali P.S. On 13.2.04 she was posted in the same place and in the

same capacity. The case was endorsed to him for investigation by the then I.C. Purnasri Mukherjee. After endorsement, she took up the investigation.

During investigation, she visited the P.O. and drew up a rough sketch map of the P.O. That was the sketch map along with index, marked Ext.5. She examined some witnesses and recorded their statements u/s 161 Cr.P.C. She recovered the victim girl from Chandipur Orissa, P.S. Balasore. She also arrested the accused from Chandipur and took him to Midnapore and forwarded him before Learned Magistrate, Midnapore. She also prayed for recorded the statement of the V.G. u/s 164 Cr.P.C. before the Ld. Magistrate. She also prayed for arrangement for medical examination of the accused as well as the victim. She collected the report of the 164 Cr. P. C. and also collected the medical report. After collecting medical papers, as per order of her supervision, she submitted charge-sheet against the accused u/s 263/366/376 I.P.C. During her investigation, she also prayed for adding section 376 I.P.C., and the prayer was allowed.

When she arrested the accused person, at that time, the accused consumed some highly poisonous Ayurvedic medicine and became restless and she admitted him to the hospital and after release from hospital, she forwarded him to the court.

That was the endorsement of Sri Purnasri Mukherjee, the then I. C. of the Kotwali P.S., marked Ext.3/2.

She recovered the victim with the help of local Baleswar police.

At the time of recovery, she was accompanied by A.S.I. Tarun Day, L.C. Bina Dey and the brother of the victim girl and one brother's friend of the V.G.

She did not record the statement of the writer of the F.I.R. who was an advocate by profession. In the F.I.R. it has not been mentioned that the V.G. made a telephone at the house of the victim's father.

Through Court - In the C.D., it was mentioned that the victim made a telephone to her house at Midnapore.

- xiii. In her cross-examination PW-8 stated that I examined the victim's brother Sk. Kayum on 13.2.04 at about 02:05 night. The victim's brother Sk. Kaym did not state to him that his sister telephoned to his house. He did not state to him that his friend Tapan Nandi stated to him that he saw his sister at 9 a.m. at Bus Stand. PW-3 Anima Khatun did not state to him that her daughter made a telephone at the house of Suprabhat Babu, recorded the statement before recovery of the victim girl. After recovery of the victim she did not record any statement of any witnesses except victim girl. PW-4 stated to him that there was altercation between Taslima Khatun and the accused person. She saw the P.O. in the sketch map of Barabazar. She did not prepare any sketch map of the place from where the victim was recovered. The word Barabazar has not been written in the sketch map.

Volunteers :- The Mallick Chawk is within Barabazar.

She did not recover any tabich, maduli from the possession of the victim. She did not recover any Ayurvedic medicine from the possession of the accused person recovery memo. In the C.D., there was document to show that she recovered the victim with the help of the police personnel of Baleshwar recorded the statement of one Pushpita Samanta. The victim girl did not state to him that the accused offered her chocolate. The victim girl did not state to him that the accused offered her chocolate. The victim girl did not state to him that accused made a gharbandhak. The victim did not state to me that after taking the chocolate the victim became senseless and nor she stated to him that after she was senseless she was taken to Midnapur Central Bus Stand by a rickshaw from Barabazar. The victim did not state to him that she made a telephone to the house of Suprabhat Dey at Midnapur. The victim girl did not state to him that on the way of return from Baleshwar to Midnapur the accused consumed some jaribhuti and became ill. The statement of the victim was recorded on 13.2.04. The other witnesses were examined on 13.02.04. The place where the victim girl was confined was an abandoned place. She did not examine any local witnesses of that locality. She did not record any statement of any police personnel of Baleshwar district. Before submitting charge sheet she sought for the opinion of the senior official. In her possession there was no document to show that she received any opinion from her senior officer. She did not prepare any sketch map of the house of the victim girl. She did not examine any

adjoining person of the house of the victim's father's house. She also did not examine any adjoining witness of the house of the accused person at Midnapur. During investigation she did not search the house of the accused person. She did not seize the wearing apparel of the victim or the accused person.

- xiv. PW-8 further deposed stated that the Diary no.401 dated 08.02.04 was written by Ex-S.I. Sankar Lal Dutta Banik, now retired. She served with him. She know his handwriting and signature. That was the G.D. entry which was written by S.I. Dutta Barick. That was the attested copy of the said G.D. entry. The original G.D. entry no.401 was marked Ext.7 and it was replaced by attested copy as it was required for day to transaction at the P.S.

The Arrest memo was written by him and it bore his signature. At that time, town S.I. of Baleswar P.S. Parameswar Shau was present and the accused also put his signature. That was the original arrest memo, marked Ext.8. That was the requisition for police help which was submitted by him before the O.C. Baleswar P.S. in duplicate carbon process. That was the carbon copy written and signed by him and was duly received by the then Duty officer of Baleswar P.S. Parameswar Shau, marked Ext.-9. That was the information regarding after recovery of the victim and the apprehension of the accused to the C.C. of Baleswar P.S. which was written in duplicate carbon process. That was the carbon and it was duly received by S.I. Parameswar Show (objected to).

The victim girl did not put any signature in the recovery memo. She did not prepare any sketch map of the P.O. from where the victim was recovered. She did not cite the police officer of Baleswar P.S. as witness. She did not record any statement of the police personnel of Baleswar P.S. At present the G. D. book in which containing they left Kotwali P.S. to go to Chandipur was not with them at present. She could not say the relevant G.D. entry no.. In the C.D., there was no mention of G.D. no. There was no mention of G.D. entry no. of giving and coming to Chandipur.

- xv. PW-9 in his deposition stated that he was M.O. Now at present posted as R.M.O. cum Clinical Tutor, Midnapur Medical College & Hospital. He posted here since March 2003. He was joining West Bengal Health Service since 1986. During his service career he never examined a lot of victims U/S 376 IPC and submitted report. On 16.02.04 he examined one Taslima Khatun, female, daughter of Sk. Kasim of Sepoy Bazar, P.S. Kotwali, Paschim Medinipur in connection with Kotwali P.S. case no. 34/04 dt. 13.02.04. He examined her teeth, height, weight and vagina and other parts of the body. On examination, he passed the opinion that the victim girl was capable of sexual intercourse. It was difficult to ascertain & whether the victim girl was raped or not. The victim girl was referred to V.D.R.L. Department for determination of venereal diseases, No foreign particles was found in her private parts. Vaginal swab was preserved and sent to forensic laboratory.

To Court :- If the examination was done in the later stage i.e. after 4/7 days after injury there was no mark of injury in the private parts of the lady. It may be the fact that the victim may be raped under various circumstances, he did admit that the suggestion of the Ld. P.P. in-Charge that the presence of injury was not just in case of rape. The report was marked as extb.-6.

- xvi. In his cross-examination PW-9 stated that on examination he did not find any external injury. If there was any forceful rape there must be any injury in the private parts of the victim girl and also the external injury may be found.
- xvii. PW-10 in his deposition stated that he was A.S.I. of police now at present posted at Sadar Traffic under Kotwali P.S. On 13.2.04 she was posted at Kotwali P.S. as A.S.I. of police. At that time S.I. Kabita Das was also posted at Kotwali P.S. On 13.2.04, he started along with S.I. Kabita Das, lady constable Rina Dey and two other gentlemen for Chandipur, Orissa for the purpose of recovery of the victim girl and apprehension of the accused. They left Kotwali P.S. along with force on getting information. At first, they went to Baleswar P.S. and sought for police help. With the help of local police personnel of Baleswar, they went to village Suhhas under P.S. Baleswar. As per identification of the gentlemen, they recovered the victim and also arrested the accused person. The accused was present in court. Thereafter they went to Baleswar P.S. along with the victim and the accused. Thereafter they brought then to Kotwali P.S.

xviii. In his cross-examination PW-10 stated that till the date of recovery of the victim, he was at present posted at Kotwali P.S. as A.S.I. of police. He did not make any statement to the I.O. with regard to that case. In the Arrest memo, there was no signature of mine. At present, in his custody there was no document to show that he went to Chandipur being accompanied by the I.O. That was the first time he stating that he went to Chandipur along with S. I. Kabita Das and others.

10. From the assessment of the aforesaid evidence it transpired as follows:-

- i. PW-1 stated in his deposition that he lodged a missing diary with the Kotwali P.S. after his daughter went missing. However, the missing diary was not produced before the Learned Trial Court during the course of trial.
- ii. PW-2 – stated in his examination-in-chief that the accused person wanted to marry the victim lady but the victim lady rejected his proposal. Thereafter, he stated in his examination-in-chief that Tapas Nandi (PW-4) saw the victim lady when she was talking to another unknown person. However, PW-8 (Investigating Officer) stated in his cross-examination that PW-2 did not state to him that his sister i.e. the victim lady called him/her family members over the telephone to rescue her.
- iii. PW-3 – She did not state anything in her examination-in-chief which indicated that her daughter was being enticed away by the appellant. It appeared from the evidence of the

Investigating Officer (PW-8) that PW-3 did not state to him that the victim lady was called at the house of one, Suprobhat Babu, who was never examined by the Investigating Officer. It was specifically mentioned at this juncture that the Investigating Officer during the course of cross-examination admitted that he recorded the statements of all the available witnesses before the recovery of the victim lady.

- iv. PW-4 – He stated in his examination-in-chief that on 8.2.04 at about 10:00 am, he found the victim lady along with the appellant at Midnapore Central Bus-Stand. He stated in his cross-examination that it was a fact that the Midnapore Central Bus-Stand was a busy place. He further stated that he did not tell the Darogababu that at Midnapore Central Bus-Stand a hot altercation was going on between the victim lady and the appellant. However, it appeared from the evidence of the Investigating Officer, that he stated to the Investigating Officer that an altercation was going on between the victim lady and the appellant.
- v. PW-5 – From her depositions, it appeared that at the time of the recording of her evidence, she was aged about 29 years. The alleged incident took place 2 years ago, therefore at the time of the incident the victim lady was aged 27 years. It appeared from her examination-in-chief, that there was an

acquaintance between her and the appellant. She stated in her examination-in-chief first time before the Learned Trial Court that on 8.2.04, she met the appellant. Thereafter the latter offered her a chocolate, while she swallowed and thereafter lost her senses, though she was aware that the appellant took her to central bus-stand Midnapore by a rickshaw. Thereafter, they boarded the bus, the bus stopped at Beldah. From Beldah, she went to Balasore by train. At 4:30 pm., they reached Chandipur. However, it appeared from the evidence of the Investigating Officer that the victim girl did not mention the aforesaid incident during her examination by the Investigating Officer in the form statements recorded under Section 161 of the Code. The victim girl also resiled from her statement made before the Learned Judicial Magistrate under Section 164 of the Code of Criminal Procedure. The Learned Judicial Magistrate was examined as (PW-7) and the victim girl narrated physical torture and the story of enticing away during her depositing before the Learned Trial Court.

- vi. PW-6 – He received the F.I.R from PW-1. Apart from the same, he had no other knowledge about the aforesaid incident.
- vii. PW-7 – It appeared from her deposition that the victim girl resiled from her statements recorded under Section 164 of

the Code to the extent of the fact “that she was raped by the accused persons”. Even the Judicial Magistrate did not state at the time of the examination-in-chief regarding the statement of the victim lady which revealed that she was enticed away by the appellant. Rather it was crystal clear that she went voluntarily with the appellant.

- viii. PW-8 – It appeared from the cross-examination of the Investigating Officer that the First Information Report was scribed by one advocate and he was not examined as “the scribe” of the First Information Report. The Investigating Officer examined the victim’s brother on 13.2.2004 at about 2:05 am. and it appeared that the victim’s brother being PW-2 did not state that his sister (the victim lady) called at her residence over telephone. He did not state that his friend, one Tapan Nandy (PW-4) stated to him that he saw his sister (the victim lady) at 9 am. at the bus-stand. Further, the Investigating Officer also examined the victim girl on 13.02.04. He further stated that after the recovery of the victim girl he did not record the statements of any other witnesses except the victim girl. He further stated in his cross-examination, that he examined the other witnesses on 13.02.04. The other witnesses referred to the relatives and the close relations of the victim girl. However, he did not examine any local witnesses. The Investigating Officer did

not prepare the sketch map of the place of occurrence i.e., from where the victim girl was recovered. The Investigating Officer did not cite the police officer of Baleshwar Police Station as witness. The Investigating Officer had failed to produce before the Learned Trial Court the G.D. Entry that she had left the Kotwali Police Station to go to Chandipur and there was no other G.D. Entry which showed that the Investigating Officer returned from Chandipur to Kotwali Police Station. In the case diary, there is no mentioning of any G.D. No. which showed that the Investigating Officer went to Chandipur and returned to Kotwali Police Station from Chandipur. From the aforesaid factual backdrop, it was crystal clear that the Investigating Officer conducted investigation in a very lackadaisical manner and was not even bothered to examine the adjoining witnesses at the victim's house. The Investigating Officer did not search the house of the accused person to seize the wearing apparels of the victim and other material evidences which were required for establishing the prosecution case to support the conviction under Section 366 of the Indian Penal Code.

- ix. The contradictions between the statements of the witnesses which were recorded by the investigating officer and the evidence of the said witnesses before the Learned Trial Court are poles-apart. The contradictions were as follows :-

- a. PW-2 brother of the victim lady examined by the Investigating Officer on 13.02.2004 at about 2:05 am at night. He did not state to the Investigating Officer that his sister telephoned to his house. He did not state that his friend Tapan Nandi (being PW-4) stated to him that he saw his sister at 9:00 am at bus stand.
- b. PW-3, Anima Khatun, mother of the victim lady did not state to the Investigating Officer that her daughter made a telephone at the house of Suprabhat Babu (not examined).
- c. PW-4, Tapan Nandi, friend of PW-2 stated to the Investigating Officer that there was an altercation between Taslima Khatun (victim lady) and the present appellant.
- d. PW-5, victim lady did not state to the Investigating Officer that the accused offered her a chocolate. She did not state that after taking the chocolate, the victim became senseless. She did not state while she was senseless, she was taken to Midnapore Central Bus Stand by a rickshaw from Barabazar. She did not state that she made a telephone to the house of Superabhat Dey at Midnapore.

- x. PW-9 – He examined the victim girl and it appeared from his cross-examination that there was no external/internal injury on the body of the victim lady.
- xi. PW-10 – He stated in his examination-in-chief that he assisted the Investigating Officer (PW-8) one lady constable Rina Dey (not examined) and two other gentlemen from Chandipur, Odisha for the recovery of PW-5. During cross-examination, it appeared that his statement was not recorded by the Investigating Officer (PW-8) and whatever he stated before the Learned Trial Court that was for the first time before the Learned Trial Court and thus, this evidence was not at all trustworthy to place reliance upon the same.

11. Section 366 of the Indian Penal Code states as follows:-

“366. Kidnapping, abducting or inducing woman to compel her marriage, etc. - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, 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, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.”

12. In the instant case the victim being an adult woman being acquainted with the appellant knowing the same to be a married person went with him. There has been inconsistencies in her deposition contradicting her statement from time to time. The victim had voluntarily accompanied the appellant from place to place and her forceful captivity cannot be relied upon. The appellant was known to the family members of the victim. The victim lady being well educated should have been aware of the consequence of getting involved with a married man whatever might be the pretext. She had deliberately acted at her peril with her own consent and the appellant cannot be held responsible for an act of offence under Section 366 of the Indian Penal Code without the ingredients proved by the prosecution.
13. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
14. Accordingly, the criminal appeal being CRA 450 of 2007 stands disposed of.
15. There is no order as to costs.
16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)