

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 377 OF 2007

SK.SAMAD

VS

THE STATE OF WEST BENGAL

For the Appellant : Ms. Sibangi Chattopadhyay, Adv.
Ms. Momotaj Begum, Adv.
Mr. Sourav Mondal, Adv.

For the State : Mr. Anand Keshari, Adv.
Ms. Mamata Jana, Adv.

Last heard on : 28.01.2026

Judgement on : 06.04.2026

Uploaded on : 06.04.2026

CHAITALI CHATTERJEE DAS:-

1. This appeal has been filed challenging a judgement and order dated June 6, 2007 and June 8, 2007 passed by the learned Additional District and Sessions Judge, Fast Track Court No. 7, picture Bichar Bhawan in ST Case no. 2(7) of 2005 under section 363/373 of the Indian penal code whereby passed order of conviction and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.1000/- in default simple imprisonment for a further period of

two months for the offence punishable under Section 363 of the Indian penal Code.

Factual matrix of the case

2. A suo motu complaint was lodged by the S.I. after rescuing a minor girl and the accused found in front of Tarun Smriti Sangha at premises No. 7 on Abinash kabiraj Street Kolkata 6. On 3.11.03 at about 21.05 hours they received an information from a reliable source that one minor girl is detained at the above-mentioned club and immediately it was informed to the superior and with the permission they left with a lady constable and reached in front of Tarun Smriti Sangha . On identification by the contacted source to the minor girl and the accused, the police contacted two local witnesses namely Mahendra Singh & Sanjay Das after disclosing their identities, narrated the purpose of their visit and asked them to stand as witness to which they agreed and they accompanied the police personnel and examined the girl including the accused person in presence of the witnesses. The girl disclosed her identity as xxx aged about 13 years, alleged to have brought there by xxx on the plea of purchasing garments from khonna Market but took her at brothel area where the girls /women were standing on the streets/corridor/staircase in scanty dresses and used for the purpose of prostitution against her will .She further narrated that on hearing hue & cry by her some local people came to the spot and rescued her, as well as pointed the accused and brought them to the club. The said statement of the minor was recorded and took the cognizance at the spot and rescued her from there with the help of lady constable at about 23.05 hours. The accused was arrested for having direct complicity to this regard

and the ground of arrest was duly communicated to him and all necessary legal formalities were observed. On the basis of such facts and circumstances Burtolla P.S. case No. 2013 dated 3.11.03 started under Section 373/34 of the Indian penal code against the present appellant. On completion of investigation the police submitted charge-sheet on October 6, 2004 under section 363/373/511 of the Indian penal code against the appellant and the learned Chief Metropolitan Magistrate took cognizance accordingly as the case was exclusively triable by a Session Judge, on May 7, 2005 The Additional Chief Metropolitan Magistrate, Calcutta committed the case to the learned Chief Judge, City Sessions court, from there transferred to the Fast-Track court 7, Calcutta for trial. Hence the trial commenced.

The prosecution adduced ten witnesses to prove the case. The learned court considering submissions advanced before the learned court by both the prosecution as well as the learned defence counsel and after assessing the evidences adduced, passed such order of conviction. Under Section 363 IPC. Hence this appeal has been filed.

Submissions

3. The learned Advocate appearing on behalf of the appellant argued that though the case started under Section 376/373/511 of the Indian Penal Code, the order of conviction was passed only under Section 363 of Indian Penal Code and acquitted the appellant from the charge under Section 373 of the Indian penal code due to lack of evidence. It is further submitted that no GD was placed in order to show when the police personnel left the police station on receiving information. No witness was produced to show that the girl was

rescued and the entire story made out is fabricated. It is further argued that the victim throughout stated that she was in a bicycle with the accused person and hence question of kidnapping cannot be stated to be established as kidnapping cannot be done in a bicycle. There is delay in sending the victim for medical examination without having any reason. No local witnesses were examined to substantiate that police rescued the girl. In the Exhibit 4, the name of the club was mentioned but none was cited as witness on behalf of the club. It was further argued that raid itself was not proved as no local resident was cited as witness. It is further submitted that the prosecution has miserably failed to prove the case beyond the shadow of all reasonable doubt and hence the judgement and order of conviction is liable to be set aside.

The learned prosecution on the other hand raised vehement objection and submitted that the victim was aged about 13 years and she was under the lawful custody of Chhanda Bibi .The accused took her out from such lawful guardian attracts the ingredients of section 363 of the Indian penal code. In order to prove, the prosecution adduced 9 witnesses and the learned court considering the facts and circumstances passed such order of conviction under Section 363 of the Indian penal code and hence there is no reason to interfere with such decision.

Analysis

4. Heard the submissions. On careful perusal of the materials on record as well as the evidences adduced and the submissions advanced, the seminal issue now falls for consideration is whether the learned court rightly passed the order of conviction under section 363 of the Indian penal code when order of

acquittal was passed in respect of the charge under Section 373 of IPC. In order to prove the case, the prosecution adduced 10 witnesses including the victim. Since the case was started on the basis of the statements of the victim girl, her evidence is of utmost importance and to be scrutinised carefully.

5. The victim revealed her name as xxx while adducing evidence. According to her testimony on the eve of Eid, Sk. Samad asked her Aunty to give new garments to the victim and in the last part of month in 2003, took her to the bus stand for purchasing garments but when they reached at the bus stand he refused to purchase garments on the plea of presence of known persons of the locality. Then she was taken to Lake Town and from there to a bad place. She found several women standing with scanty dresses. She was taken to upstairs of a building and at that time the accused was talking with someone regarding sale price. She then shouted and on hearing her cry some members of a local club came and rescued her and took her to their club. The members of the club called police over telephone and then police went to the spot and rescued her. She admitted to give statement to the police and not to any other person. She further deposed that she was brought up in the house of her Dadi at phoolbagan while she was only eight years. She heard that her brother and sister resides on footpath only near Jora Girja. Her mother was then residing at Dhapa. Chhanda Bibi was not related to either of her parents and her mother took her to her house. Her mother also resided in the house of Chhanda Bibbi for two months. She could not recollect the exact date when they had been to the house of Chhanda Bibi. Her mother left her in the house of Chhanda Bibi and told her to work there. Her mother left about two years back. She also did not inquire about her. From her testimony also it can be

seen that the husband of Chhanda Bibi was then in jail. It is further seen that Chhanda Bibi used to deal with country spirit and during rescission she used to reside in the schoolhouse at Dhantala . She admitted that the accused used to go to Chhanda Bibi's house at times but she did not know him. According to her evidence it seems the accused intended to purchase new garments for her and Chhanda Bibi allowed her to go with the accused whom she didn't know prior to that date. She also admitted that she stated to police that the accused intended to marry her but she refused. She was first taken to Hatiara Bus Stand then taken to Hatiara in a bicycle by the accused person. From her deposition it further transpires that when they reached at the Hatiara bus stand it was 8:45 PM and at that time, shops were opened. She could not give any specific time when she reached at Lake Town, but 2/3 shops were opened at that time in Lake Town. In Lake Town the accused kept his cycle in a place and she was taken to a place by Bus but she could not say the name of the place. It was late at night when they got into bus. She could guess the place as a bad place since she found some girls standing on the roads wearing scanty dresses. She did not ask any person about the reason why those girls were standing like that. She could not say the time taken to reach the place and could not see the lady with whom the accused was talking regarding sale price. From her evidence it could be gathered that they went to a multi storied building and the local club was adjacent to the said building. This witness was examined further on recall by the prosecution and she gave her name and surname and admitted that she mentioned different surname before the magistrate where she first stated the incident.

6. In this case P.W. 2 Sanjay Das deposed that on November 3, 2003 at about 10.30/11 PM while he was sitting in Tarun Smriti Sangha , noticed a gathering and on reaching found three police officials in plain dress. He deposed that the part of the building was used for prostitution which was situated at a 10 metres from Abinash Kabiraj Street Tarun Smriti Sangha. He claimed to a member of that club and on asking by Police official about their identity he disclosed his identity as local resident. He identified the victim girl and deposed that on being asked that girl disclosed that she was brought by accused on the plea of purchasing clothes. As per saying of the police he put his signature on a paper. He also said that other witness also put his signature in his presence. The police party rescued the and arrested accused present in court and identified him.

7. He admitted that entire Abinash Kabiraj Street is a red light area and a prostitution business is there in the part of that building where he is a tenant of one room in the second floor in that house lives with his wife and child and one Pummi Singh is the owner. According to him Tarun Smriti Sangha is situated at a distance of 10 m from 7 Abinash Kabiraj Street but he did not hear any sound of weeping and he was not present in the club while members of the club went to the building after hearing sound of weeping. He did not find any member of their club to go to the building on hearing sound of weeping. He did not see either accused or the girl to come to their club. He gave the statement to the police between 10:30 P.M. and 11 P.M. that he had been to the place of gathering while he was sitting in the club. He specifically stated that no materials were seized in their presence. Police informed them that one

girl was rescued in their presence and asked them to put signature on the paper.

8. In this case the allegations were levelled against the present appellant to kidnap the minor girl/victim from the lawful custody of the Guardian without permission. According to the victim girl her mother kept her under the custody of Chhanda Bibi .

9. Chhanda Bibi deposed as P.W 3. From her evidence it could be gathered that on a rainy season they went to schoolhouse to stay over there and then the relationship between her daughter and the victim developed and she used to live in her house. On November 3, 2003 the victim asked her to give ₹ 10 for going to her mother at Phool bagan . She said that on November 2, 2003 the victim came to her house. On the next day there was a function in their locality and the victim went there and returned to her house and informed that a man was asking to go with him for purchasing clothes thereafter she went along with the person. The witness could not recollect his name excepting his face and she identified the appellant in the court. After three days she was informed that the victim was arrested and then she was interrogated by police. She admitted that on November 2, 2003 she was in dealing with country spirit and she used to do the same for 2/3 months in a year. Since there was no other accommodation to stay during rainy season all the neighbours took shelter in the school during rainy season and they had to stay for 15/20 days or more in the school during rainy season. She further deposed that the mother of the victim was known to her as the victim took her mother to her house. Initially her daughter brought the victim to her house though she was not the classmate of her daughter. This witness did not go to the house of the

victim and prior to the date when her daughter brought her to her house. She admitted that the victim used to work in her house as maidservant without any remuneration and she came to her house and stayed there previously for 2/3 months. Her testimony further discloses that the victim was disclosed as footpath dweller at Phool Bagan. The witness knew the aunt and uncle of the victim prior to November 2, 2003. The house of accused was at a considerable distance from her house and she knew the accused as he had a cycle repairing shop on the road. According to the testimony of this witness the victim used to reside with her mother prior to November 2, 2003 for 2/3 months. She stated to the police that the victim was brought to her house by her eldest daughter six months back. She also said that the victim went to the function on 3rd November which was five minutes walking distance from her house and did not return after the function. After three days she got information from a Muhuri Babu which means she got the information on 6th November or 7th November. From her cross-examination further inconsistencies can be found as she admitted to have stated to police that the victim after watching the function came to her and asked about a person who was trying to take her away for purchasing clothes .

- 10.** From her evidence glaring inconsistencies are found regarding the period of stay of the victim at her house immediately preceding the date of incident. The victim on one hand deposed that for last two years she was residing at the house of the P.W. 3 being left there by her mother and she had no connection with her mother since then. On the contrary the version of the witness P.W.3 is that about six months back her eldest daughter brought her to their house as they developed a good bonding but she used to work as maidservant at her

house without any salary. Once the witness disclosed that prior to the date when her daughter brought her to her house, she did not know the victim but voluntarily said that previously she came to the house and stayed there for 2/3 months. She also deposed that after the victim went to attend the function on November 3, 2003 returned and informed her about the person asking her to go with him for purchasing clothes and she left but did not return and after three days she came to know about the arrest of the victim. On the contrary in her cross examination she deviated from her previous statement and deposed the victim after taking money from her went to the function and did not return after the function and after three days she got information about her from a Muhuri Babu. But there is three days gap from the day she left and the report of arrest but according to the victim she left on November 3, 2023 and on that day at about 10 P.M. itself she was rescued. In this case the Learned Session court passed the order of acquittal in respect of charge under Section 373 of IPC and convicted for the offence under Section 363 IPC. Therefore it is necessary to see how it is proved that she was taken away from lawful custody.

11. P.W.4 Labanya Gayen was a lady constable and was in the raiding team, deposed that on November 3 2003 they were taken to an area under the name “Sonagachi” where they found some gatherings in front of a club. She could not recollect the name of that club. They noticed one minor girl weeping surrounded by a mob and they were asked to take custody of the girl. He deposed that at the time of rescue there where many members of the club. The victim disclosed before then that victim was taken to the place by person on the plea of purchasing clothes. The man was also detained and was arrested and she identified the accused on dock. She could not give the name of the

officer in charge of the I.T section who gave them the order to go out. She could not say whether there was any female constable in the IT section or not and she made the Office-in-Charge where they reported. She could not give the exact time they took to reach the spot from their office. According to evidence 2/3 boys of that club when called upon by the officer in front of the club in her presence and thereafter they took her to Burtolla Police Station and made necessary G.D entry.

12. P.W. 5 Dipti Nath being a lady constable, on November 3, 2003 she went out for raid at about 10/10.30 p.m. lady constable and officers of IT department. On reaching they noticed one girl was weeping surrounded by a gathering at Sonagachi in front of the club. They took custody of the girl and the persons stood as witness to the incident. This witness disclose the name officer in charge I.T. section and the OC I.T gave oral order. She also said that the list was prepared after taking custody of the girl but she did not put any signature.

13. The statement given by the victim before the learned Magistrate was proved as the officer adduced evidence as P.W.7.Uttam Kr.Mondal ,the S.I of the police deposed that on November 3,2003 at about 9.30pm while he was on duty along with S.I J.C Paul ,S.I C Chapia ,O.C of I.T section ,Inspector Shiv Shankar Guha at about 21.30 hrs as they received information from reliable source that one minor girl had been detained at Sonagachi area at Abinah Kabiraj St. in front of Smriti Sangha . He further deposed that the statement of the victim was recorded in his presence where she disclosed her surname as Das @ Khatun. This witness did not record the statement of any witnesses under section 161 of the code of criminal procedure.

14. P.W. 9 is Gopal Shaw, a resident of Abinash Kabiraj Street where he had a shop of fruit juice. on 3.11.2003 his shop was opened and he was about to leave after closing his shop on that at about 10/10.30 pm when he heard a shout from nearby and found a girl rushed towards the club and on asking she asked for help .He took the girl to the club and asked her to sit there and then the members of the club made arrangements. This witness was declared hostile at this stage on the prayer made by the prosecution. He could not identify the girl in the Court. He denied to have been examined by the I.O.

15. In connection with the case. P.W. 10, the I.O. of the case investigated as per the instruction given O.C.I.T, D.D, Lalbazar .On that day he received an information that a minor girl is detained at Sonagachi red light area in front of Tarun Sangha Club .On his enquiry the girl as found at the spot disclosed her name giving the surname as Khatun @ Das and she was taken by the appellant/accused on the pretext of purchasing clothes. She could not identify the house at that time where she was alleged to be taken by the accused. The accused also admitted to take her from her aunt for purchasing some garments. They took both the victim and the accused to Lalbazar and on the next day were produced before the Learned Magistrate. The victim was produced before the medical expert where in the report she put her L.T.I .He collected the medical report and also collected X-Ray plate but could not produce the same being misplaced .From his cross examination it is evident that he did not take any written permission from the superior officer at that time .He made the G.D Entry before reaching at the place of occurrence .It further transpires from his testimony that he recorded the statement of the victim girl on the same date when she was rescued and also recorded the

statement at the P.O of the witnesses and showed the same to the O.C ,I.T Mr. Shabshankar Guha ,at that time he did not instruct him to draw up any F.I.R on the basis of such statement of the victim girl. He did not procure the signature of the victim or accused on the said seizure list. From his evidence it can be found further that the victim stated before him that the victim disclosed his intention to marry her and the accused was familiar with her previously. He made the G.D Entry at 12.35 at night after they returned being G.D Entry no 26 dated 3.11.2003 .He further stated that excepting the G.D NO 312 Dated 3.11.2003 he did not make any other G.D entry at Burtolla P.S .He admitted not to produce any document relating to G.D Entry no 26 dated 3.11.2003. before the court.

- 16.** The learned advocate has challenged the raid itself since the prosecution failed to prove that the raiding party went to the spot as per source information as the I.O admitted not to make any G.D Entry before leaving the police station which is the sine qua non . The only GD shown was after they returned from the spot on the basis of which the FIR was lodged. No statement of the lady constables were recorded and the other official named as superior officer were not examined. In this case on behalf of the defence three witnesses were examined .D.W. 1 Samad Khan who claimed to be an agent of I.C.I.C.I Bank and a resident of Hatiara for last 5 years deposed that he knew the father of the victim Sk. Muslem who often went to by-cycle shop of SK. Samad for taking the cycle on rent .He also knew the son of Chhanda Bibi and the victim who often visited the shop for taking bicycle on hire and a dispute arose between them and an altercation took place and Chhanda Bibi who intervened and threatened Samad to frame in a case and this witness heard

the same being present in the shop .He could not give the name of the son of Chhanda Bibi .He narrated that the dispute was regarding an amount due from the victim on account of rental charges of the bicycle.

17. Another defence witness Md. Mustak deposed that he knew the victim who often took bicycle on rent from the shop of Samad. He also said that a quarrel took place between Sk. Samad and the victim over an amount due from the victim. He also found Chhanda Bibi quarrelling with the accused and also threatened him to implicate in a case falsely. D.W. 3 Golam Rasul is an employee of cloth shop he knew the accused having a business of bicycle. The learned court discussed the basic ingredients to attract the charge under Section 373 of IPC and assessed the evidences adduced and held that the evidence is not sufficient to hold that the accused bargained with anybody to sell the victim and hence passed the order of acquittal in respect of the charge but held him guilty of the offence punishable under Section 363 IPC as it was undisputed that the victim qua the minor was taken from the lawful custody of Chhanda Bibi with whom the girl was residing for last six months . The prosecution has not challenged the order of acquittal.

18. In this case on close scrutiny of the entire evidences adduced by the witnesses and on perusal of the medical report there remains no doubt of the fact that the victim was a minor and her age was either 16 or 17yrs and the appellant was a resident of the same locality. From the testimonies of the victim and Chhanda Bibi glaring inconsistencies found as to the exact reason why she was residing with Chhanda Bibi and since when she was residing and further in what capacity. Once she has been described as a friend of the daughter of Chhanda Bibi again portrayed her as a maid servant without any

remuneration and sometimes said she lived only for 6 months when the victim said she was living there for last 2 years. Question arises whether taking the victim to that amounts to kidnap or Chhanda Bibi can be considered as her lawful guardian. It can be presumed that the victim under compelling circumstances had left by her mother and she had no contact with her father, was residing in the house of Chhanda Bibi but it was never seen that said Chhanda Bibi had any responsibility to act like her guardian. From the evidence of Chhanda Bibi it is clear that on 3.11.2003 after the victim went to attend the function she did not return and after 3 Days she was informed about her arrest. During this three days she never enquired about the victim girl and never lodged any missing diary nor informed her mother and also never tried to contact with Sk. Samad despite having knowledge that the victim girl went with him as he intended to purchase garments. More so the appellant was definitely a known person of her otherwise she could have raised concern about the girl. In fact the evidence of the victim girl's manifest that the accused intended to marry her so it is glaringly proved that she had acquaintance with the appellant prior to the date of incident, and she never alleged she was taken by the accused forcefully. The testimony of Chhanda Devi is full of suspicion as it is glaringly visible that she was not aware about the exact date when she left. If her version is considered the victim went to function in 3.11.2003 and after three days got the information that is on 6th or 7th Nov. When the victim was rescued the very same day.

Conclusion

- 19.** So the above facts and circumstances evinces that Chhanda Bibi cannot be described as a lawful guardian of the victim and the victim voluntarily went

with the accused. If the evidence of Chhanda Bibi is relied on it would appear there was a gap of three days from the day she left but from the evidence it is can be found that on the very day morning she left and was rescued in the late evening .Therefore clear inconsistencies are glaringly visible regarding the guardianship of Chhanda Devi for which her evidence adduced by her loses its credentials.

20. The Learned Court found that no member of club corroborate the version that she was rescued and took insider the club and police failed to place any materials to show that the accused was bargaining with someone in a house for setting, the sale price of the victim girl. The I.O. also said that victim did not state before him that she was bargaining with a lady to sell her. The Learned Court found the charge under Section 373 IPC was not proved so the case of prosecution that the appellant intended to sell her being a minor was not proved and acquittal the appellant from the said charge. No appeal was preferred against such judgement and holds him guilty for the offence under Section 363 IPC.

21. The Learned Counsel for the appellant relied upon a decision of Hon'ble Supreme Court reported in ***Shyam and Another vs. State of Maharashtra***¹ where also the prosecutrix was allegedly kidnapped by the appellant by making her to sit on the carrier of a bicycle. It was held prosecutrix a fully grown woman not jumping down from the bicycle or putting up a struggler or raising an alarm to protect herself, she was a willing party and there was no taking out of the guardianship of her mother and set aside the conviction. In that case the prosecutrix was taken out of the lawful guardianship of her

¹ 1995 SCC (Cri) 851

mother. More so the evidence of I.O. evinces that the I.O. recorded statement of victim at the P.O. when she disclosed that the appellants intention was to marry her and she was familiar with him. She also deposed before the court that the appellant proposed her to marry and because of her such statement the instruction to FIR was not given by O.C. T Mr. Guha. He therefore also did not prove signature of victim or appellant in the Seizure list.

22. In the present case from the nature of evidence it is found that the age of the victim was 16/17 years and she had acquaintance with the appellant prior to the incident, so he was not an unknown person. She never raised protest throughout the entire day. No allegation of sexual assault was made. The place where from she was allegedly rescued though known as Red light area, common people also resides there. The P.W. 2 Sanjay Das, was a resident of that area and engaged in taxi service, and he did not hear any weeping but in his presence the victim informed that she was brought to purchase garments. A girl of that age growing up in an environment where country Liquor is sold residing with a lady who is not her relative and her brothers and sisters are footpath dwellers, developed acquaintance with the appellant, left the house of Chanda Biwi did not raise objection when taken in a bicycle from there by a Bus to a place not known to her. Therefore it can never be said that she was taken from the lawful custody of Chhanda Devi as she voluntarily went with him and Chhanda Devi was not a custodian or guardian of the victim girl.

23. Therefore in view of the above facts and circumstances this Court is of considered view that the prosecution has failed to prove the charge under Section 363 IPC and the Learned Court only considering the age of the victim passed such order of conviction of taking her from lawful custody when

acquitted the accused from the charges under Section 373 IPC and thereby it warrants interference.

24. Hence the judgement and order of conviction is liable to be set aside.

25. This CRA is hereby allowed.

26. The judgement and order of conviction is hereby set aside.

27. The appellant be released from the bail bond.

28. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)



सत्यमेव जयते

Calcutta