

(2016) 12 GAU CK 0055
In the Gauhati High Court
Case No : Criminal Rev. P. No. 14 of 2007

Basanta Tanti

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401
Penal Code, 1860 (IPC) — Section 363

Citation : (2017) 1 GauLT 158

Hon'ble Judges : Mr. Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : Mr. N.K. Kalita, Addl. PP, for the Respondent; Mr. R.S. Chouhan, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Paran Kumar Phukan, J. (Oral) - This revision is directed against the judgment and order dated 30.06.2006, passed by the learned Sessions Judge Darrang, Mangaldoi in CrI. A. No. 11(D-2) affirming the judgment and sentence dated 22.02.2005, passed by the learned CJM, Darrang, Mangaldoi in G.R. Case No.948/2002 convicting the accused petitioners u/s 363 of the IPC and sentencing them to imprisonment for 3 months and to pay fine of Rs.500/- in default to imprisonment for another 7 days.

2. Heard Mr. R. S. Chouhan, learned counsel for the petitioner and also heard Mr. N. K. Kalita, learned Addl. PP, Assam.

3. The accused petitioners stood trial on the accusation that on the evening of 08.09.2002 the accused petitioners taking advantage of the absence of other senior members in the house of the informant enticed away the two minor daughters of the informant, took them to Delhi by train and engaged them as maids in the house of the Punjabi woman. The father of the girl Gaja Nayak lodged an FIR with the in-charge Dimakuchi police outpost on 11.09.2002 on the basis of which Paneri police registered a case u/s 366 (A)/34 of the IPC.

4. During investigation both the girls were recovered and brought to their house. The IO got their statement recorded u/s 164 Cr.P.C by the Magistrate, they were also medically examined in the 30 bedded hospital. On completion of the investigation police submitted charge sheet against the accused petitioners u/s 363/34 of the IPC.

5. In order to prove the charge prosecution examined 7 witnesses including the IO. The accused petitioners denied their involvement and in support of their defense they examined 2 witnesses.

6. Mr. Chouhan, learned counsel appearing for the accused petitioners submits that none of the ingredients of section 363 of the IPC has been established in this case and it is not proved that the girls at the relevant time were minors. He also led me through the evidence of the two girls to submit that they are not forced to go to Delhi by the accused petitioners and they on their own volition went to Delhi.

7. Mr. N. K. Kalita, learned Addl. PP, on the other hand contends that no serious dispute was raised during the trial of the case regarding the age of the victim girls and they have categorically stated in their evidence that they were aged about 14/15 years at the relevant time. Not even a suggestion was put during the trial that they were not minors. Even though there is no evidence that they forced the girls to go to Delhi that would not be a ground to hold that they were not kidnapped from the lawful guardianship. He has painstakingly taken me through the evidence of the two girls to project that both the accused petitioners enticed away the two girls to go to Delhi luring them of better jobs with more earning in Delhi. Learned State counsel further submits that there was concurrent finding of facts of the courts below and there is nothing to show that the evidence on record was misread by the courts below or not properly appreciated and as such, the revisional interference is unwarranted.

8. In the backdrop of the aforesaid contention while going through the evidence on record, particularly, the evidence of the two girls who have been examined as PW 3 and PW 4 what I have found is that both of them were initially brought by the accused petitioners to Bhutiachang Tea Estate and from Bhutiachang Tea Estate they were brought to Guwahati by a bus and thereafter they were taken to Delhi in a train and they were kept in the house of Punjabi woman in Delhi as house maids. After a few days the accused petitioners Raju Antony and his mother brought them back to Bhutiachang Tea Estate. In cross examination both of them admitted that they were not forced by the accused petitioner to go to Delhi but their evidence reveals that both of them were aged about 14/15 years and were minors unable to give consent. Even though they gave consent to go to Delhi or even if it is established that they were not forced by the accused petitioners to go to Delhi that would not be a ground to hold that they were not taken away from the lawful guardianship.

9. The very object of the section is to protect the minor children from being

seduced for improper purpose and also to protect the rights and privileges of the guardian having the lawful custody of the minor wards. The main ingredients of the offence lies in the taking or enticing of a minor under the ages specified in section 361 of the IPC out of keeping of the lawful guardian without consent of such guardian. In *Prakash v. State of Haryana* reported in AIR 2004 SC 227 the Apex Court has held that the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

10. In the present case also even though there is no evidence that the accused petitioners forced the girls to go to Delhi but, it clearly reveals that they persuaded the girls to go to Delhi by luring them of more income in Delhi and they did so without the consent of their guardians, which brings the offence within the purview of section 363 of the IPC.

11. The evidence of the two girls is also corroborated by the other prosecution witnesses. PW 1 Meri Chay, is the sister of the informant who claims to have received information from the accused Basanta and Martha that they have taken the girls to Delhi for better financial prospects. PW 2 Bilian Tappo who is the maternal uncle of the girls came to know about the incident from PW 1 and is a reported witness but he, too some extent supported the prosecution case. PW 5 is the informant of the case and the father of the girls. The FIR was lodged after a few days of the incident. Obviously in such a case since the father was looking for the girls he did not lodge the FIR initially and having come to know that they were taken away to Delhi only he filed the FIR. Under such facts and circumstance the delay is found to be well explained. In the FIR the date time and manner of commission of the crime has been clearly spelt out including the names of two accused petitioners Basanta and Martha and there is nothing to suspect embellishment or afterthought.

12. On an overall assessment of the entire evidence on record and on perusal of the impugned judgment of the courts below I have found that both the courts below concurrently came to the finding that the accused petitioners kidnapped the two girls from the lawful guardianship and the entire evidence on record has been elaborately discussed by the courts. I have found no infirmity in the judgment passed by the learned Sessions Judge, Darrang, Mangaldoi in convicting the accused petitioners.

13. Consequently, the judgment and sentence passed against the accused petitioners stands affirmed.

14. The revision is found to be without any merit and is dismissed.

15. Send down the LCR.

16. The accused petitioners are directed to surrender before the trial court to serve out the sentence. The period already undergone by the accused petitioners in jail shall be set off from the sentence.