
(2016) 02 CAL CK 0057
In the Calcutta High Court
Case No : C.R.A. 136 of 2012

Pankaj Minz

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157
Penal Code, 1860 (IPC) — Section 363, Section 367, Section 371, Section 90

Citation : (2016) 02 CAL CK 0057

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Ranadeb Sengupta, Amicus Curiae, for the Appellant; Manjit Singh, Ld. P.P., Rituparna De and Pawan Kumar Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—1. This appeal arises out of judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track 3rd Court, Alipurduar, District-Jalpaiguri in Sessions Trial No. 15/2009 arising out of Sessions Case No. 22/2009, by which the appellant was convicted for the offence under Section 363 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 10,000/-, in default to suffer imprisonment for one year more.

2. The backdrop of conviction and sentence of the appellant is as follows:--

On March 21, 2008 the de facto complainant filed a written complaint before the Inspector-in-Charge of Kumargram Police Station on the basis of which Kumargram Police Station Case No. 82/2008 dated March 21, 2008 under Sections 363/371 of the Indian Penal Code came into existence. The contents of the written complaint disclose that on August 15, 2007 the appellant took away two minor daughters of the de facto complainant to Delhi on assurance of providing them with work in Delhi, so that they can maintain their livelihood. It is alleged that on March 14, 2008 the de facto complainant came to learn that her

elder daughter - Bhaduri is not traceable in the house of her master at Delhi. Since the appellant and her wife did not take any interest to bring back both the minor daughters of the de facto complainant from Delhi, the de facto complainant initiated the criminal proceeding against the appellant and her wife. The police conducted the investigation and the younger daughter of the de facto complainant by name Ripa Roy was brought back from Delhi to the house of the de facto complainant. The police submitted charge sheet on completion of investigation. The trial court framed charge against the appellant and his wife for the offence under Sections 363/367/371 of the Indian Penal Code. On conclusion of the trial, the trial court acquitted the wife of the appellant of the charge under Sections 363/367/371 of the Indian Penal Code and the appellant was also acquitted of the charge under Sections 367 and 371 of the Indian Penal Code. However, the trial court convicted the appellant for the offence under Section 363 of the Indian Penal Code and sentenced him to suffer imprisonment for seven years and to pay fine of Rs. 10,000/-, in default to suffer imprisonment for one year more. The said order of conviction and sentence passed by the learned Judge of the trial court is under challenge in this appeal.

3. Mr. Ranadeb Sengupta, learned Counsel, appointed as amicus curiae to defend the appellant, has made elaborate submission pointing out the discrepancies in the evidence of prosecution witnesses. Mr. Sengupta contends that the F.I.R. of the case registered on March 21, 2008 at about 8-45 p.m. could not be placed before the learned Magistrate on the same date after 8-30 p.m., but the endorsement on the formal F.I.R. indicates that the F.I.R. was seen by the learned Magistrate on March 21, 2008. He argues that the contents of the written complaint treated as F.I.R. were not read over and explained to the de facto complainant. He has also pointed that the accusation of the charge read over and explained to the appellant and his wife indicates that the year of commission of offence was wrongly recorded in the charge as August 15, 2008 instead of August 15, 2007 and thereby the appellant is prejudiced. By referring to the evidence of the mother of the victim girls (P.W. 1) and the father of the victim girls (P.W. 15), Mr. Sengupta submits that the parents of the minor victim girls voluntarily handed over the custody of the victim girls to the appellant, so that the victim girls may be engaged in some work in Delhi and they can maintain their livelihood. Mr. Sengupta argues that the younger victim girl, Ripa Roy came back to her parents' house during the investigation of the case, but the elder victim girl, Bhaduri could not be traced out. According to Mr. Sengupta, both the victim girls were taken away from the custody of the parents by the appellant with the consent of the parents and as such the offence of kidnapping punishable under Section 363 of the Indian Penal Code is not made out against the appellant.

4. Mr. Pawan Kumar Gupta, learned Counsel for the State, contends that the parents of the victim girls gave consent for taking away the victim girls to Delhi by the appellant so that the victim girls may be provided with work for maintenance of their livelihood, but the appellant ultimately did not do so and thereby the elder daughter of the de facto complainant remained untraceable till

the conclusion of the trial of the case. According to Mr. Gupta, the consent given by the parents of the victim girls under misconception of fact cannot be construed as a valid consent and as such, the offence punishable under Section 363 of the Indian Penal Code is made out against the appellant.

5. On perusal of the formal F.I.R. of Kumargram P.S. Case No. 82 of 2008 dated March 21, 2008 (Ext. 3), I find that the learned Magistrate has put his signature on the said formal F.I.R. on March 21, 2008. On perusal of the order passed by the learned Magistrate, it appears that a copy of the formal F.I.R. was put up before the learned Magistrate for perusal on March 24, 2008 which is after lapse of three days from the date of registration of the F.I.R. It is the duty of the Investigating Officer to forward a copy of the formal F.I.R. to the learned Magistrate immediately after registration of the F.I.R. in terms of provision of Section 157 of the Code of Criminal Procedure, because the delay in forwarding the copy of the F.I.R. to the learned Magistrate may raise suspicion about the fabrication of F.I.R. and concoction of fact. In the instant case, I do not find any evidence on record to come to the conclusion that the F.I.R. is ante-dated or the facts have been concocted in order to implicate the appellant on false allegations.

6. The contention made by the learned amicus curiae that the contents of written complaint were not read over and explained to the de facto complainant cannot be accepted, as P.W. 1 (the de facto complainant) has stated in her evidence that the contents of written complaint were read over to her and thereafter she had affixed her L.T.I. on the same. It is true that the year of commission of offence is wrongly mentioned in the charge, but the same cannot cause prejudice to the appellant as the appellant is aware when he took away the two victim girls to Delhi for providing them with work.

7. On an analysis of evidence of the prosecution witnesses, I find that the evidence of P.W. 2, P.W. 4 and P.W. 5 is in the nature of hearsay evidence and as such, the same cannot be relied upon by the court. P.W. 6 does not know anything about the incident and he was declared as hostile and as such, I am not inclined to give any credence to the evidence of P.W. 6. P.W. 7 who belongs to another village, does not know who took the victim girls to Delhi and as such his evidence does not help the prosecution to prove the incident. P.W. 8, a co-villager of the victim girls, heard about the fact of taking away the victim girls by the appellant and as such his evidence also does not help the prosecution to establish the charge against the appellant. Similarly, P.W. 10 also heard about the incident from others and as such his evidence will also go down as hearsay evidence. P.W. 1 happens to be the mother of the victim girls and P.W. 15 happens to be father of the victim girls. It is the consistent evidence of both the parents of the victim girls that they are poor and unable to maintain the livelihood of all members of their family. It is elicited from the evidence of those witnesses that the appellant and his wife gave assurance to them to provide work to their daughters - Bhaduri aged about 13 years and Ripa aged about 11 years in Delhi, so that they can maintain their livelihood. It is the consistent

evidence of both these witnesses that the appellant took away the elder daughter Bhaduri to Delhi for providing work and she came back after some months. Both the witnesses have stated that the appellant took away both the victim girls on second occasion to Delhi and thereafter the elder daughter, Bhaduri remained untraceable and the younger daughter, Ripa came back home. The above aspect of evidence of both the parents of the victim girls is corroborated by the younger daughter, Ripa (P.W. 11). P.W. 11 has categorically stated how she was taken to Delhi by the appellant along with her elder sister and how she came back home and the elder sister remained untraceable. The admitted position is that the elder daughter of the de facto complainant aged about 13 years was not traceable till the conclusion of the trial of the case. It has, thus, been established from the evidence of prosecution witnesses, namely, P.W. 1, P.W. 11 and P.W. 15 that the appellant took away both the victim girls to Delhi for providing them with work in Delhi for maintenance of their livelihood with the consent of the parents. It appears from the evidence on record that the younger victim girl, Ripa (P.W. 11) came back from Delhi to her home, but the elder victim girl, Bhaduri remained untraceable.

8. The question for consideration of the court is whether the appellant took away both the victim girls to Delhi with the consent of the parents of the victim girls and if so, whether the said consent is valid in the eye of law. The evidence on record indicates that the parents gave consent for taking away their minor girl to Delhi by the appellant for maintenance of their livelihood, because the appellant and his wife gave assurance to the parents of the victim girls that the victim girls would be provided with work in Delhi. It appears from the evidence of P.W. 11 (younger victim girl) that the appellant took away the elder daughter, Bhaduri from the place where both of them were kept by the appellant in Delhi and she did not get any opportunity at any material point of time to meet the elder victim girl. Had the victim girl been taken to Delhi for providing the work by the appellant, the appellant would have traced out the elder victim girl in Delhi and brought her back to her home when the parents of the victim girls wanted her back to their home. The fact that the elder victim girl could not be traced out in Delhi goes to establish that the appellant had taken away the elder victim girl from the custody of the parents having full knowledge that she would not be brought back to her house in future. So, the consent given by the parents of the victim girls to the appellant for taking away the victim girls from their house to Delhi was under misconception of fact as laid down in Section 90 of the Indian Penal Code. Accordingly, the consent given by the parents of the victim girls for taking away the victim girls to Delhi by the appellant under misconception of fact cannot be a valid consent in the eye of law. The logical inference is that the appellant has committed the offence of kidnapping punishable under Section 363 of the Indian Penal Code and as such I cannot persuade myself to interfere with the judgment of conviction and sentence passed by the learned Judge of the trial Court.

9. As a result, the judgment and order of conviction and sentence passed by the

learned Additional Sessions Judge, Fast Track 3rd Court, Alipurduar, Jalpaiguri in Sessions Trial No. 15 of 2009 arising out of Sessions Case No. 22 of 2009 is hereby affirmed.

The appellant is directed to serve the remaining period of sentence as he is already in custody.

Let a copy of this judgment and order be sent down to the learned court below along with the lower court records for favour of information and necessary action.