
(2016) 03 CAL CK 0036
In the Calcutta High Court
Case No : C.R.A. 617 of 2013

Saima Khatun

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Evidence Act, 1872 — Section 118

Penal Code, 1860 (IPC) — Section 120B, Section 363, Section 363A, Section 371

Citation : (2016) 03 CAL CK 0036

Hon'ble Judges : Ishan Chandra Das, J.

Bench : Single Bench

Advocate : Amitabha Karmakar and Arup Kumar Bhowmick, for the Appellant;
Manjit Singh, Ld. P.P. and Anjan Datta, for the Respondent

Final Decision : Dismissed

Judgement

Ishan Chandra Das, J.—1. This criminal appeal has been directed against the judgment and order of conviction dated 22-04-2013 and 23-04-2013 passed by the Additional District & Sessions Judge, Amta, Howrah, in Sessions Trial No. 335 of 2012 wherein the learned trial court found the appellant and three others guilty of the offence punishable under Sections 363/363A of the Indian Penal Code convicted and sentenced them to suffer rigorous imprisonment for seven years and to pay fine a sum of Rs. 5,000/- each for each offence, i.e. under Sections 363/363A of I.P.C. subject to set off in terms of Section 428 of the Cr.P.C. with a further direction to run both the sentence concurrently.

2. Facts of the case, in brief is that on 28th day of June, 2012 while, Ajoy Pramanik, a boy of three years, son of the de facto complainant, Buddha Pramanick, while playing at his home at Gujarpur, Amta, Howrah, he was kidnapped the appellant and her three companions from lawful guardianship of the de facto complainant in order that such minor may be employed or used for the purpose of begging or the like. Such incident took place between 7-30 and 8

a.m. on the date of alleged incident and stating the above noted allegations, the written complaint was lodged before the Officer-in-Charge of Amta P.S., Howrah, who, on receipt of such written complaint, started Amta P.S. Case No. 182 of 2012 dated 28-06-2012 under Sections 363/363A/371/120B of the Indian Penal Code where the appellant and three others were brought before the court below to stand trial and accordingly learned trial court framed the following charges against the appellant, Saima Khatun @ Khatoon, and three others, which are quoted below:

"First - That you, on or about the 28th day of June 2012 at about 7.30/8 A.M. out of criminal conspiracy with each other kidnapped Ajoy Pramanik aged about 3 years from lawful guardianship of Budha Pramanik of Vill. Sujarpur under P.S. Amta from the house of Budha Pramanik and thereby committed an offence punishable under Section 363/120B of the Indian Penal Code, and within the cognizance of this Court.

Secondly - That you, on or about the 28th day of June, 2012 at about 7.30/8 A.M. out of criminal conspiracy with each other, not being the lawful guardian kidnapped a minor Ajoy Pramanik from his lawful guardian Budha Pramanik from the house of Budha Pramanik and obtained his custody in order to employ the minor in begging or in any illegal work or act (sic) and thereby committed an offence punishable under Section 363A/120B of the Indian Penal Code, and within the cognizance of this Court".

3. Learned trial court, in course of trial, examined five witnesses altogether; whereas the appellant and others examined two witnesses to establish their defence and consequently on conclusion of trial, learned court below found the appellant and others guilty of the offence as complained of and convicted them accordingly, as quoted earlier.

4. Assailing the judgment and order of conviction, the instant appeal has been preferred by this appellant Saina Khatun mainly on the following grounds:

1) that the learned trial court failed to appreciate the facts and circumstances of the case and as such, passed an erroneous judgment, the same being absolutely detrimental to the interest of the appellant;

2) that the learned trial court failed to appreciate the discrepancies in the evidence of the prosecution witnesses and by overlooking all the discrepancies and contradictions passed the judgment which is absolutely bad in law, violative of fundamental rights and the principle of natural justice etc.

3) that the investigation of the instant case was done casually without fulfillment of the basic requirements of investigation and it was perfunctory in nature;

4) that the learned trial court failed to understand the fact of this case since the local people and the neighbours of the de facto complainant, who were the vital witnesses, were not examined in course of trial;

5) no witness to the seizure of railway ticket from the appellant was examined and the learned trial court while convicting the appellant and others overlooked the fact of such seizure; and

6) learned trial court while convicting the appellant and others did not search for corroboration of the allegations brought against the convicts from the evidence of the local disinterested witnesses and passed the judgment on the basis of the surmise and conjecture and not tenable in law.

5. By way of producing two witnesses (D.Ws. 1 and 2), the appellant tried to establish that the appellant herein was mentally disbalanced lady, she was deserted by her husband and found missing immediately before the alleged incident for which her father (D.W.-1, Md. Nasiruddin) lodged a General Diary before Rabindranagar P.S. (Kolkata 66).

6. Learned trial court, upon consideration of the materials on record as produced by the prosecution or the defence found the appellant and others guilty of the offence as noted earlier and convicted them accordingly.

7. The point for consideration before this Court is whether the learned trial court was justified in convicting the appellant for commission of the offence punishable under Sections 363/363A of I.P.C.

8. The de-facto complainant, Buddha Pramanik, resident of Amta (Howrah), while examining himself as P.W.-1 before the learned trial court, stated on solemn affirmation that on the date of incident, i.e. about 8 a.m. while his son was playing in front of his house near Amta Railway Station, four females kidnapped his son, Ajoy Pramanik and boarded on a train when such victim raised alarm, the mother of the victim (P.W.-2) and some local people rushed to the Railway Station and found the appellant and others to give some food to him and seeing such incident, the mother of the victim, Malati Pramanik, started crying, called her husband and other neighbours and all of them rushed to the Railway Platform to rescue their son from the clutches of the person kidnapping their child from their lawful guardianship. While proving the written complaint (Ext.-1) one Dudh Kumar Singh (P.W.-4) stated that as a close neighbour he had the occasion to rescue the minor son of the de facto complainant from the clutches of the appellant and others from the Railway compartment at Amta Railway Station after a tussle between them. In this context, the evidence of the victim (P.W.-3) can be taken into consideration in dealing with the merit of the case. From a perusal of the statement of the said victim, who was examined before the learned trial Court as P.W.-3, it appears that learned trial court before examining him as witness tested him in terms of Section 118 of the Indian Evidence Act and the statement of the victim as recorded by the learned trial court during trial is quoted below:

"On the date of incident my mother went to pond and I was playing in front of my house. At that time the "Jemmas" who are present before this court today (Identified the accused) took me on their laps and give some food and took me

to train. Police came and took those "Jemmas" to P.S."

9. Learned counsel for the appellant in course of his argument pointed out that the Test Identification (T.I.) parade of the appellant and other convicts was necessary with a view to connecting them with the alleged offence but in the instant case, no T.I. Parade was held at the instance of the prosecution either before or after the commencement of trial. He also urged that as the appellant and her companions were allegedly caught from the place of occurrence while they were in operation of committing the offence of kidnapping of a minor boy, it would be necessary for the prosecution to establish guilt of the appellant and others beyond doubt by the legal process as provided by the Evidence Act. Criticising the findings of learned trial court in this regard, he emphatically submitted that the findings of learned trial court were not based on sound reasoning.

10. My attention was drawn to the oral testimony of one Md. Nasiruddin (D.W.-2), who claiming himself to be the father of the appellant herein, stated that the appellant was to some extent mentally disbalanced and she was in the habit of leaving the house occasionally. It also transpires from his (D.W.-2) oral testimony that on 24th day of June, 2012, the appellant left her house and he lodged the missing diary after four days, i.e. 27th day of June, 2012.

11. Learned Advocate appearing for the State at the very outset, drew my attention to the written complaint dated 28-06-2012 and pointed out that the father of the victim (P.W.-1) though a post-occurrence witness vividly described the incident which took place at the Railway Station and his statement was duly corroborated by his wife (P.W.-2), Malati Pramanik. Such witness (P.W.-2) found her son in the clutches of the appellant and others while the victim was crying and to pacify him he was given some food by those miscreants. She also stated that seeing the incident, she started crying and called her husband and other neighbours, who immediately rushed to the Railway platform to rescue her son from the custody of the appellant and her companions, who were detained by the local people near the platform and subsequently, they were handed over to the local police.

12. In the background, there is undoubtedly no room to express any doubt about the veracity of the allegations of the prosecution basing on the statements of the parents and neighbours of the victim. In course of trial, the appellant took an alibi that she was psychiatric patient and in the habit of leaving her house, as her father stated before the court as D.W.-2 but learned trial court did not place any reliance upon such a defence, not being supported by medical evidence.

13. Learned counsel for the appellant in course of his impressive argument drew my attention to the statement of the victim (P.W.-3) as stated before the trial court and opined that as the victim was a 3-year-old boy there was possibility of tutoring against the appellant and others but for the sake of argument if I ignore the evidence of the victim, the evidence of other witnesses cannot be impeached

since most of them were the ocular witnesses of such an incident which took place in the broad day light and the place of occurrence, being a Railway platform, their presence at the place as a neighbour cannot be doubted.

14. Learned counsel for the State in course of his argument relied on a decision of the Hon"ble Apex Court as reported in , (2010) 9 SCC 567 in the case of C. Muniappan & Ors. vs. State of Tamil Nadu and urged that in absence of T.I. parade in the instant case when the appellant and her companions were caught red handed, no purpose would be served by producing the appellant and others before those witnesses who caught them at the spot of such incident.

15. Taking into consideration the facts and circumstances of the case, I find substance in his argument. Learned trial court in the impugned judgment categorically discussed this issue and came to the conclusion that non-production of the accused persons before the T.I. parade should not be treated "defective investigation" vitiating the entire proceeding.

16. Regard being had to the facts of the case, I firmly conclude that the learned trial court was justified in convicting the appellant and there is nothing to interfere with his findings. Since the term of sentence was proportionate to the offence committed, I find no merit in the present appeal, which is liable to be dismissed and the same is dismissed accordingly.

17. Let a copy of this order be sent the jail authority of concerned Correctional Home at once where the appellant is confined, for information and necessary action, if any.

18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis.