

(1997) 06 GAU CK 0014
In the Gauhati High Court
Case No : Criminal Revision No. 22 of 1997

Samir Saha and Another

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 05-06-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360
Penal Code, 1860 (IPC) — Section 363, 365

Citation : (1998) CriLJ 1360

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Dutta, for the Appellant; S. Das, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Das, J.—This is an application in revision by Shri Samir Saha and Shri Tuku Mia whose conviction and sentence u/s 363 and 365 of IPC have been upheld by learned Sessions Judge, South Tripura, Udaipur with modification to the extent that both the petitioners are to suffer rigorous imprisonment for six months for each of the offences punishable under Sections 363 and 365 of IPC. The sentences were, however, ordered to run concurrently.

2. The case of the prosecution, so far as it is now material, may be summarised briefly as follows :-

On 19-5-1996 at about 7/8 p.m. Smt. Siha Debnath who is the resident of village No. 3 Kshudiram Pally under Birganj Police Station proceeded a certain distance along with her friend just to see her off. But while coming back it was alleged, the petitioners along with two others called her to say something and as they are known persons Smt. Debnath went near them. But no sooner had she gone near them than the petitioners along with their associates suddenly grappled Smt. Debnath, fastened her mouth by means of a napkin and thereafter forcibly took her to the house of some person at a place called Tutbagan" and confined her in

a room and locked the door so that she might not escape. But at night Smt. Sikha felt urge of motion so she knocked the door when father of accused viz. Tuku Mia opened the door and allowed her to go out to answer the call of nature. Taking advantage of this opportunity Smt. Debnath ran away and concealed herself in a nearby jungle and on the following morning she came to the motor-stand wherefrom her brother and others who were already in search of her brought her back to the house.

3. But again on 21-5-1996 Smt. Sikha was found missing. So her brother Narayan Debnath lodged an FIR with O/C, Birganj P.S. narrating the above facts.

4. On the basis of the FIR, O/C, Birganj P.S. registered a case and started investigation. In course of investigation the Investigating Officer recovered Smt. Sikha from the house of Subodh Debbarma and thus after completing the investigation the Investigating Officer submitted the charge-sheet through the O/C for prosecution of the present petitioners and their associates for commission of the offence under Sections 363 and 365 of IPC.

5. Learned trial Court framed two distinct charges, viz. one u/s 363 of IPC and another u/s 365 of IPC against the petitioners and their two other associates. The charges were read over and explained in Bengali to the petitioners and their associates who pleaded not guilty and claimed to be tried.

6. In order to bring home the charges the prosecution examined 6 witnesses in all including the victim girl and exhibited some documentary evidence viz. FIR etc. The accused persons led no evidence in support of their defence. However, their defence as would appear from the trend of cross-examination as well as the statements they gave at the time of examination u/s 313, Cr.P.C. is that a false case has been foisted against them. However, learned trial Court after appreciation of the evidence on record held the petitioners as well as other two accused guilty for commission of the offence u/s 363 of IPC and accordingly convicted them u/s 363 of IPC. But while awarding sentence learned trial Court awarded sentence to accused Noor Mia and Tuku Mia to suffer R.I. for 2 years for commission of the offence u/s 363 of IPC and also awarded sentence of R.I. for one year for commission of the offence u/s 365 of IPC. The sentences were however ordered to run concurrently. As regards accused Samit Saha who is one of the petitioners learned trial Court sentenced him to suffer R.I. for 6 months for commission of offence u/s 363 of IPC. The learned appellate Court decried the discrimination and hence modified the sentence to the extent that the petitioners should suffer R.I. for 6 months only as already mentioned above. Learned appellate Court acquitted the accused Noor Mia with admonition. Hence, this revision.

7. In the first place it has been argued by Mr. S. Dutta, the learned counsel appearing on behalf of the petitioners that the conviction of the petitioners u/s 363 of IPC is bad in law as there is no iota of evidence on the record to show that the prosecution proved that the girl was minor i.e. below the age of 18 years

at the time of occurrence. It is, therefore, necessary to look into the essential ingredients of the offence of kidnapping a minor girl from lawful guardianship which are:-

- (i) that the age of the minor is less than 16 years if the minor is a male and less than 18 years if the minor is a female;
- (ii) that the minor was taken or enticed away;
- (iii) that the minor was in the keeping of his or her lawful guardian; and
- (iv) that the guardian did not consent to his or her removal.

8. A perusal of the above ingredients make it clear that this Section 363 of IPC can have no application to a case where the person alleged to be kidnapped from the lawful guardian is not a minor. It is therefore necessary to scrutinise the evidence to see if there is any evidence to show that the victim girl, namely, Smt. Sikha Debnath was below the age of 18 years. I have carefully gone through the evidence on record and to my astonishment I find that there is actually no evidence whatsoever to show that the victim girl was below the age of 18 years at the time of occurrence. Only thing which is available from the evidence of the victim girl is that while giving her particulars at the time of deposition she stated that her age was 16 years 6 months. But that part cannot go into evidence. Therefore, the conviction and sentence passed by the courts below u/s 363 of IPC is not maintainable and accordingly I set aside the finding of conviction of the learned courts below u/s 363 of IPC.

9. Now so far as the conviction and sentence passed upon the petitioners u/s 365 of IPC is concerned, it would be apparent from Section 365 of IPC that this section enacts that kidnapping or abduction with intent to secretly and wrongfully confine a person is an offence. The gravamen of the offence under this section is the intention to keep the wrongful confinement a secret. The learned counsel for the petitioners has quite strenuously argued that there is practically no cogent evidence to show that Smt. Sikha Debnath was kidnapped and wrongfully confined. Smt. Sikha Debnath who is the victim girl has been examined as PW 3. On perusal of her evidence I find that she has quite categorically stated that on 19-5-1996 around 7/8 p.m. when she was returning to her house after seeing off her friend, the petitioners along with others grappled her, fastened her mouth by means of a napkin and thereafter forcibly took away her to a house and confined her in a room and also locked the door. The court below after elaborate discussion of the evidence on record also made the finding that this statement of the prosecutrix has been well supported by the circumstantial evidence i.e. her recovery from the motor stand on the following day and subsequent kidnapping and recovery by the police.

10. The learned counsel for the petitioners has, however argued that the statement of the victim girl that she concealed herself in the jungle for the whole night is not acceptable, I am, however, unable to accept this contention as her

statement has been well supported by other evidence particularly her brother PW 1 who brought her on the following day from the motor stand. The victim girl also narrated this story to her brother and relations. It may be borne in mind that to support the charge of wrongful confinement proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced on the mind of the victim as to create a reasonable apprehension in the mind of the victim. In the instant case it has been affirmatively proved that she was confined to a room. I find no reason to reject the testimony of the victim girl. The contention of learned counsel for the petitioners is therefore, not acceptable.

11. The next contention of learned counsel for the petitioners is that no charge was framed for commission of the offence that had taken place on 21st May, 1996. But the learned Public Prosecutor has repelled the contention by making his submission that the present case is concerned with charge that was framed in respect of the offence that had taken place on 19-5-1996. The charge was framed in respect of the offence that was committed on 19th May, 1996. Therefore, the contention of learned counsel for the petitioner is considered not relevant.

12. It has also been argued by the learned counsel for the petitioners that there was some delay in lodging the FIR. It is true that the FIR was lodged on 21-5-1996. But on going through the evidence on record I find that Noor Mia requested PW 1 not to disclose this matter to any one. That apart in such a case the guardians always avoid publicity of such occurrence in apprehension that they will be in difficulty to give the girl marriage. Therefore, the delay of one day which occurred cannot be considered fatal to the case.

13. The last submission of learned counsel for the petitioners is that the courts below ought to have considered the case of the petitioners u/s 360 of Cr.P.C. On going through the judgment of the trial court I find that learned trial Court considered the matter and rejected in view of the gravity of the offence. No other points of law has been agitated before this Court.

14. For the reasons stated above I upheld the conviction and sentence passed upon the petitioners for commission of the offence u/s 365 of IPC. The conviction and sentence passed upon the petitioners u/s 363 of IPC are however set aside. The petitioners must surrender before the trial Court to serve out the period of sentence. The period of detention under gone during investigation, enquiry and trial shall however, be set off.

15. The petition is dismissed.