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CRA-2321-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 29th OF APRIL, 2026CRIMINAL APPEAL No. 2321 of 2013*RAVI DAS GUPTA**Versus**THE STATE OF MADHYA PRADESH*

Appearance:

Shri Rajesh Kumar Tiwari and Shri Ravendra Shukla - Advocate for
appellant.

Shri Ritwik Parashar - Government Advocate for respondent/State.

ORDER

This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred against the judgment and order dated 20.08.2013 passed by the 2nd Additional District Judge, Maihar, District Satna in Sessions Trial No. 134/2013, whereby the appellant was convicted for the offence punishable under Section 363 of the Indian Penal Code, 1860 and sentenced to undergo three years' Rigorous Imprisonment with a fine of Rs. 1,000/- with default stipulation.

2. The prosecution case, in brief, is as follows: On 15.03.2013, the prosecutrix (PW-5) was found missing from her house. A missing person report (No. 05/2013) was registered at Police Station Badera, Maihar. During investigation, it transpired that the appellant was also missing from the same date. Consequently, on the basis of suspicion, an FIR bearing Crime No. 42/2013 was registered against the appellant under Sections 363 and 366 IPC.

3. The prosecutrix returned home on her own on 20.03.2013. She was



subjected to medical examination. After completion of investigation, charge-sheet was filed and the case was committed to the Sessions Court. The learned 2nd Additional Sessions Judge, Maihar framed charges against the appellant under Sections 363 and 366 IPC. The appellant denied his guilt and took the defence that the prosecutrix was a consenting party and that he had been falsely implicated.

4. The learned Trial Court, upon appreciation of evidence, acquitted the appellant of the charge under Section 366 IPC, holding that the prosecution had failed to establish the essential ingredients of abduction for the purposes mentioned therein. However, the Trial Court convicted the appellant under Section 363 IPC on the ground that at the time of the incident, the prosecutrix was approximately 15 years and 6 months of age, and hence her consent was legally irrelevant for the purposes of the offence of 'kidnapping from lawful guardianship' under Section 361 IPC.

5. PW-5 (the prosecutrix) deposed before the Trial Court that on the date of the incident, i.e., 15.03.2013 at 4:00 AM, she left her house on her own and went to the field of Ravidas. Therefrom, she proceeded to Badera, then to Maihar, then to Jabalpur, and finally to Bombay (Mumbai) all in the company of the appellant. She further stated that the appellant had told her that he would marry her. She also stated that the appellant did not commit any wrongful act against her.

6. In her cross-examination, PW-5 categorically stated that:

- (a) The appellant did not use any force against her;
- (b) She had gone with the appellant of her own free will after informing her mother;
- (c) The appellant did not take her away by enticement or allurement;
- (d) The appellant did not mislead her regarding marriage;
- (e) It was her own wish to marry the appellant, but her parents had refused



the proposal;

(f) She stayed with the appellant for five to six days of her own free will.

7. The mother of the prosecutrix in her statement has not made any allegation against the appellant.

8. The Trial Court, on appreciation of the aforesaid evidence, expressly recorded the following findings of fact: (i) the prosecutrix went to Bombay with the appellant entirely of her own will and consent; (ii) the appellant did not commit any wrongful act or sexual intercourse with the prosecutrix; and (iii) no inducement for marriage or any kind of enticement or allurement was given to the prosecutrix by the appellant. On the basis of these findings, the Trial Court rightly held that the charge under Section 366 IPC was not proved beyond reasonable doubt and accordingly acquitted the appellant of that charge.

9. Notwithstanding the above acquittal, the Trial Court proceeded to convict the appellant under Section 363 IPC on the sole ground that the prosecutrix was approximately 15 years and 6 months of age at the time of the incident and was therefore a minor. The Trial Court reasoned that since the consent of a minor is legally irrelevant for the purposes of Section 361 IPC, the defence of voluntary accompaniment was not available to the appellant. It is this finding which is assailed in the present appeal.

10. Learned counsel for the appellant submitted that the conviction under Section 363 IPC is wholly unsustainable on the evidence on record. It was contended that the prosecution has failed to establish the most fundamental ingredient of the offence namely, that the appellant 'took' or 'enticed' the prosecutrix out of the keeping of her lawful guardian. Learned counsel pointed out that the prosecutrix herself, in categorical and unequivocal terms, deposed that she



left her parental home of her own accord on the night of the incident, after informing her mother, without any force, allurement, inducement, or enticement by the appellant. It was urged that where the voluntary departure of the prosecutrix is established by her own unimpeached testimony, the foundational ingredient of 'taking' or 'enticing' under Section 361 IPC is simply not made out, regardless of her minority.

11. Learned counsel further elaborated that the Trial Court committed a fundamental error of law by conflating the irrelevance of the minor's consent with the complete dispensation of the element of 'taking' or 'enticing' which are two entirely distinct legal propositions. It was submitted that while the consent of the minor is indeed legally irrelevant under Section 361 IPC, that provision still independently requires proof of an act of 'taking' or 'enticing' on the part of the accused, which must be affirmatively established by the prosecution. Mere passive accompaniment where the minor herself is the moving party cannot be equated with an act of 'taking' within the meaning of Section 361 IPC.

12. Per contra, learned Panel Lawyer appearing for the respondent-State supported the impugned judgment and urged that since the prosecutrix was admittedly a minor at the time of the incident, her consent was immaterial in law, and the mere act of the appellant allowing her to accompany him and indeed travelling with her across multiple cities over five to six days — itself constituted 'taking' within the meaning of Section 361 IPC. It was submitted that the conviction and sentence do not call for interference by this Court.

13. Section 361 IPC defines 'kidnapping from lawful guardianship' as follows: whoever takes or entices any minor under sixteen years if a male, or under eighteen years if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent



of such guardian, is said to kidnap such minor or person from lawful guardianship. Section 363 IPC prescribes the punishment for the said offence.

14. The law on the essential ingredients of the offence of kidnapping from lawful guardianship under Section 361 IPC is well-settled. The following elements must be established by the prosecution beyond reasonable doubt:

- (i) The person taken or enticed must be a minor (under 18 years in the case of a female);
- (ii) The accused must have 'taken' or 'enticed' the minor;
- (iii) The taking or enticing must be out of the keeping of the lawful guardian;
- (iv) Such taking or enticing must be without the consent of the lawful guardian.

15. While it is true that the consent of the minor herself is rendered legally irrelevant by the express terms of Section 361 IPC, the requirement that the accused must have 'taken' or 'enticed' the minor out of the keeping of the lawful guardian is an independent and essential ingredient that must separately be established by the prosecution beyond reasonable doubt. The word 'takes' in Section 361 IPC postulates some active and positive conduct on the part of the accused a voluntary and deliberate act by him that results in the minor being removed from the custody of the guardian. Mere passivity or acquiescence i.e., allowing a minor to accompany one of her own accord has been consistently held by the courts not to constitute 'taking' within the meaning of Section 361 IPC.

16. The Supreme Court of India has consistently affirmed the above legal position in a series of authoritative pronouncements. It has been held that where a minor herself leaves her parental home of her own volition, without any active inducement, allurement, solicitation, or enticement from the accused, and the



accused merely accompanies or allows the minor to accompany him, the offence of kidnapping from lawful guardianship under Section 361 IPC is not made out. The prosecution must affirmatively prove that the accused took some positive step to induce the minor to leave her guardian's custody the mere circumstance of the minor's company does not supply this element.

17. Applying the aforesaid legal principles to the facts of the present case, the following position clearly emerges from the evidence on record particularly from the testimony of the prosecutrix herself, which the Trial Court found credible and which has not been impeached in any material particular:

(a) The prosecutrix left her house on 15.03.2013 at 4:00 AM on her own initiative, after informing her mother.

(b) No force, coercion, or compulsion was applied by the appellant.

(c) No enticement or allurement was offered by the appellant.

(d) No inducement for marriage was made the prosecutrix herself desired to marry the appellant, but her parents had refused.

(e) The prosecutrix accompanied the appellant willingly and returned home on her own on 20.03.2013.

(f) No sexual intercourse or wrongful act was committed upon the prosecutrix.

(g) The Trial Court itself acquitted the appellant of the graver offence under Section 366 IPC on these very grounds.

18. The above evidence, emanating from the mouth of the prosecutrix herself — who speaks with personal knowledge and is an unimpeached and wholly reliable witness on this aspect of the case leads to one inescapable conclusion: it was the prosecutrix who was the initiating and moving party; the



appellant did not 'take' or 'entice' her in any sense that the law recognises under Section 361 IPC. He was, at best, a passive recipient of the prosecutrix's own decision to accompany him.

19. The Trial Court fell into a fundamental error of law by conflating two distinct and independent legal propositions: (i) that the consent of the minor is irrelevant for the purposes of Section 361 IPC which proposition is legally correct; and (ii) that even in the complete absence of any positive act of 'taking' or 'enticing' by the accused, the mere presence of a minor with him constitutes kidnapping which proposition is not the law and has no support in the statutory text or the authorities. The irrelevance of the minor's consent cannot operate to supply the missing ingredient of 'taking' or 'enticing'. The two propositions operate on entirely different planes. When the evidence affirmatively establishes as it does here that the accused neither 'took' nor 'enticed' the minor, and that it was the minor herself who left her guardian's custody of her own volition, the offence under Section 361 IPC is simply not made out, regardless of the minor's age.

20. In the considered view of this Court, having carefully examined the totality of the evidence on record and having regard to the settled legal position, the prosecution has utterly failed to establish beyond reasonable doubt the essential ingredient that the appellant 'took' or 'enticed' the prosecutrix out of the lawful guardianship of her parents. The finding of the Trial Court to the contrary is not supported by the evidence on record and is, in fact, contrary to the very findings of fact recorded by the Trial Court itself in the course of its judgment. The impugned conviction under Section 363 IPC therefore cannot be sustained.

21. This Court further notes that the prosecutrix has made no allegation of rape, sexual assault, or any forced or non-consensual sexual intercourse against the appellant at any stage not in the FIR, not before the Magistrate, and not in her



deposition before the Trial Court. On the contrary, she has consistently maintained that the appellant committed no wrongful act against her whatsoever. This Court, in the interest of completeness, records this fact, as it reinforces the conclusion that the conviction of the appellant under Section 363 IPC for a substantive term of three years' Rigorous Imprisonment is wholly disproportionate, unjust, and legally unsustainable in the facts and circumstances of this case.

22. For the reasons aforesaid, the present Criminal Appeal No. 2321 of 2013 succeeds and is hereby allowed. The judgment and order dated 20.08.2013 passed by the 2nd Additional District Judge, Maihar, District Satna in Sessions Trial No. 134/2013, insofar as it records the conviction of the appellant under Section 363 IPC and sentences him to three years' Rigorous Imprisonment with fine of Rs. 1,000/-, is hereby set aside and quashed.

23. The appellant stands acquitted of the charge under Section 363 IPC. He shall be released forthwith from custody, if he is in custody and is not required in connection with any other case.

24. The fine, if any, deposited by the appellant pursuant to the impugned judgment shall be refunded to him forthwith.

25. The appeal is accordingly allowed.

(PRADEEP MITTAL)
JUDGE