

Cr. Appeal (S.J.) No.1050 of 2012

[Against the judgment of conviction order of sentence dated 18.10.2012 passed by learned Additional Judicial Commissioner-XX cum Special Judge, C.B.I., Ranchi in Sessions Trial No.81 of 2005]

1. Munna Sao @ Munna Sah				
2. Mukru Lohar @ Mukuru Lohara				
3. Raj Kumar Baitha	Appellants
	--Versus--			
The State of Jharkhand	Respondent

For the Appellants : Mr. Nitin Kumar Pasari, Advocate
 Mr. Gaurav Kaushalesh, Advocate
 Ms. Sidhi Jalan, Advocate

For the State : Mr. Santosh Kumar Shukla, A.P.P.

PRESENT

HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

By Court

- Judgment of conviction of appellants under Section 366A of the Indian Penal Code, is under challenge in the instant criminal appeal.
- As per the FIR lodged by mother of the victim girl, her minor daughter aged 15 years, was enticed by her neighbour, Sakindar Baitha and on 30.06.2004 in morning at 4 O' Clock, was taken away by him. She could not be traced thereafter and later on, under social pressure, on 01.07.2004, she was returned. The victim girl disclosed to the informant that Sakindar Baitha and these appellants were involved in facilitating the escape of the girl. Munna Sah was the driver of the Tempo by which victim was taken, Mukru Lohar was friend and Raj Kumar Baitha was cousin of Sakindar Baitha. It is also alleged that they had conjointly assaulted her son on objection being raised by him.
- On the basis of written report, Ranchi Sadar Kotwali P.S. Case No.349 of 2004 was registered all these three appellants under Sections 366A, 147, 148, 149, 448, 341, 323, 324, 307 and Section 376 of the Indian Penal Code. The police, on investigation, submitted charge sheet against all the four accused persons. The principal accused Sakindar Baitha was juvenile and his trial was separated after framing of charge against him under Section 376 of the IPC. These appellants were put on trial with Sakindar Baitha initially under Sections 147, 448, 341, 366A of the IPC. Altogether six witnesses including the victim were examined during trial on behalf of prosecution.
- The judgment of conviction and sentence is assailed on the ground that offence under Section 366A of the IPC will not be made out against any of these appellants for the reason that Section 366A IPC deals with specific offence of procurement of minor girl wherein she is kidnapped with intention that she will be forced or seduced to illicit intercourse with another person. In the present case, as per the prosecution version, the principal accused had kidnapped the girl to marry

her. There is no material on record to suggest that kidnapping was done so that minor girl could have been forced into illicit intercourse with another person other than the principal accused. It was a case of love affair and the willful elopement of the victim girl with the principal accused, for which they have been dragged without any legal basis.

5. It is argued that since marriage did not take place therefore, the offence under Section 366 of the IPC will not be made out in view of the ratio laid down in the case of *Mafat Lal & Another Versus State of Rajasthan*, (2022) 6 SCC 589. Furthermore, these Appellants were not involved in the process of taking or enticing the minor from her house. It is said that they joined and facilitated the escape at a later stage for which offence of kidnapping will not be made out in view of the ratio laid down in (i) *S. Vardarajan Vs State of Madras*, AIR 1965 SC 942. (ii) *Kavita Chandrakant Lakhani v. State of Maharashtra & Another*, (2018) 6 SCC 664

6. Learned A.P.P. has defended the impugned Judgment of conviction and sentence. It is submitted that the victim girl P.W.-3 has deposed at para-2 that Raj Kumar Baitha had ordered Munna Sah to bring tempo and when he brought tempo, he told her to accompany them. It has also come in her evidence that these Appellants had taken her by foot through the fields. It has also come in evidence that all of persons involved in the kidnapping, wanted to return her in the evening, which was opposed by Raj Kumar Baitha. This part of evidence is duly corroborated by the deposition of further witnesses.

7. Having considered the submissions advanced on behalf of both sides, and on perusal of records of the case, it is evident that FIR was lodged without any undue delay by the mother of the victim girl. Prosecution has examined altogether 6 witnesses, out of P.W. 6 is the Doctor who examined the injured, Niraj, the brother of the victim girl. P.W. 1 is the informant and mother of the victim, P.W. 2 is her father and P.W. 3 is the victim herself. P.W. 4 is the Doctor, who examined the victim and assessed her age to be about 16 years and P.W.-5 is the I.O.

8. It has been deposed by the victim girl that when she had come out from the house to attend natural call, the Appellants forcibly kidnapped her, and she was taken on foot to the agricultural field. It is also stated that they took her in tempo towards village and from there, she was taken on a motorcycle. The motorcycle by which she was taken, was being driven by Sakindar Baitha. From there, she was taken by Munna to the house of his maternal grandmother. It is also deposed that at the behest of Rajkumar, Sakindar committed illicit act with her. Her parents are not the direct eye witness to the incidence, but have narrated the story as told by the victim to them. P.W.-1 has deposed in para-10 that she had not herself seen anyone taking her daughter. P.W.-2 has deposed that his daughter was kidnapped when she had gone out to attend natural call on 30th June 2004, and she returned in the

morning on 2nd July. She was brought home by the father of Sakindar Baitha.

9. From the combined reading of the testimony of witnesses, it is apparent that the victim left her home in the early morning at 4 O'clock on the pretext of attending natural call on 30.06.2004 and thereafter, did not return that day. It is difficult to believe that the victim was taken by force in the morning when she came out to attend to her natural call. The victim has stated that she was taken to different places, at times by tempo, and on other occasion by motorcycle. It is not feasible and logically probable that she could have been taken to these different places, but she had no opportunity to resist or get the help of anyone. She was returned by the father of the main accused Sakindar, two days after the incidence. The picture that can be conjured, is that of elopement of the victim girl to join the main accused Sakindar Baitha, in which these Appellants had acted as facilitator. The matter for consideration is whether the charge of kidnapping or abduction is proved against them?

10. It has come in evidence that the victim girl was below 18 years at the time of incidence and therefore, her consent shall be immaterial. A person who takes or entices any minor under 18 years of age if female, out of keeping of the lawful guardian of such minor, without the consent of such guardian, is said to kidnap that person. As held in *S. Vardarajan case* (supra) that taking or enticing away a minor out of keeping of lawful guardian, is an essential ingredient of the offence. There is a distinction between 'taking' and 'enticing' a minor to accompany a person. The two expressions are not synonymous. In order to establish taking and enticing something more has to be shown and that is some kind of inducement held out by the accused person or an active participation by him in formation of the intention of the minor to leave the house of the guardian. There is essential distinction between taking and enticing. The word 'take' means to cause to go or to escort. When the accused took the minor with him, whether she is willing or not, the act of taking is complete and the condition is satisfied. The word 'entice' involves an idea of inducement by exciting hope or desired in the other.

11. In the present case, there was no evidence of any solicitation by the Appellants/accused persons in taking of the minor from the lawful guardianship, therefore, the offence of enticement will not be made out. However, in the very act of escorting the minor girl to different places will bring their act within the meaning of enticing. Offence of kidnapping is therefore, complete against these appellants.

12. In order to prove the charge under Section 366A of Indian Penal Code, the following ingredients need to be established:

- a) A minor girl below the age of 18 years is induced by the accused;
- b) She is induced to go from any place to do any act, and
- c) That she is so induced with intent that she may be or knowing that it is

likely that she will be forced or seduced to illicit intercourse with another person.

13. In the present case, it has come in evidence that the principal accused Sakindar Baitha was on visiting term with the victim girl. She was well acquainted with him and the girl was returned by the father of Sakindar baitha. On these evidence, allegation of procurement of minor girl is not proved against the accused persons. In order to prove the charge under Section 366A of the IPC, it was necessary to establish that they had knowledge that she will be forced to illicit sexual intercourse with another person.

Judgment of conviction and sentence passed by the learned Court below under Section 366A of the IPC is set aside and the appellants are convicted for the offence of kidnapping under Section 363 of the IPC.

On the point of sentence, considering the fact that it was a case of elopement where the Appellants had acted as facilitators, instead of sentencing them to any term of imprisonment, the Appellants are directed to be released on execution of a probation bond of Rs 25,000/- each with two sureties of like amount each for keeping good behaviour for a period of one year.

Appeal is dismissed with modification in finding and sentence.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated, 6th March, 2024

NAFR/Anit