

(2014) 06 CAL CK 0082

Calcutta High Court

Case No: Criminal Appeal No. 342 of 2011

Swarup Prakash Dhara

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: June 10, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 313
- Penal Code, 1860 (IPC) - Section 362, 366, 376, 376(2)(a)(i)(ii)

Citation: (2014) 3 CALLT 32 : (2014) 4 CCR 159

Hon'ble Judges: Tarun Kumar Gupta, J; T. Sen, J

Bench: Division Bench

Advocate: Sekhar Kumar Basu and Soubhik Mitter, Advocate for the Appellant; Kallol Mondal and Pawan Kumar Gupta, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

Tarun Kumar Gupta, J.

This appeal is directed against the judgment and orders of conviction dated 11.05.2011 and sentence dated 12.05.2011 passed by learned Additional Sessions Judge, 12th Court, Alipore in Sessions Trial No. 01(07)2008 arising out of Sessions Case No. 05(11)2006. By the orders impugned the appellant was convicted for committing offence under Sections 366 and 376(2)(a)(i)(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs. 10,000/-, in default, rigorous imprisonment for six months for committing the offence u/s 376(2)(a)(i)(ii) Indian Penal Code and to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-, in default, rigorous imprisonment for three months for committing the offence u/s 366 Indian Penal Code.

2. The prosecution case, in short, may be summarized as follows:

The victim girl lodged a written complaint dated 16th of May, 2006 to the O.C. Joynagar Police Station alleging that she being aged about 17 years fled away from

her house and married a boy with whom she had a love affair for the last two years. Her parents and other relations took her back from her husband's place in the night of 14th of February, 2006 with the help of police. She and her husband Ashok Baidya were detained in Joynagar Police Station in that night and released on the next morning. The police officer, Swarup Prakash Dhara, took her and her family members to his quarter in the next morning and broke her conch bangle and rubbed out her vermilion. He asked the victim girl and her father to call him on 19th day of February, Sunday and on that day at 5 P.M. they came to his quarter. He sent her father to the police station to put a signature for taking the victim girl in his custody through a bond, but did not permit the victim girl to accompany her father. After her father left for police station, accused Swarup Prakash Dhara forcibly raped her and threatened to kill her and her husband Ashok Baidya if she disclosed the incident to anybody. She being frightened did not speak out the incident to anybody and spoke the same to her parents only after a month. Her parents, however, were not inclined to proceed with the matter as they were trying to arrange her marriage to some other place. However, she wanted to proceed against the offending police officer by filing the complaint belatedly.

3. On the basis of the said complaint Joynagar Police Station Case No. 92 dated 16.05.2006 u/s 376 Indian Penal Code was initiated against the accused police officer namely Swarup Prakash Dhara. After investigation the police submitted charge-sheet u/s 376 of the Indian Penal Code against the appellant accused. After commitment of the case to the Court of Sessions, the case was transferred to the Court of learned Additional Sessions Judge, 12th Court, Alipore. Charges were framed under Sections 366 and 376(2)(a)(i)(ii) of the Indian Penal Code. The appellant accused pleaded not guilty and hence, the trial.

4. The prosecution examined ten witnesses namely the victim girl (PW1), Joydeb Naskar (PW2), Sankar Kumar Shit (PW3), Smt. Gita Rani Shit (PW4), Ashok Baidya (PW5), Mrinal Kanti Naskar (PW6), ASI, Soumen Dalal (PW7), Dr. U.P. Dalal (PW8), R.K. Das (PW9) and inspector Bimal Kumar Pati (PW10). The evidence of relevant PWs may be summarized as follows:

The victim girl (PW1) deposed that she had a love affair with Ashok Baidya for over two years. She left her father's place on 13.02.2006 with one Shankar Chakraborty and married Ashok Baidya at a temple. While she was in her mother-in-law's rented house at Subhasgram, Sankar Chakraborty informed her mother-in-law over phone that he was assaulted by victim's parents and other relations. They came there along with Sankar Chakraborty but she refused to return to her parents' house. At about 1.30 A.M. her parents and others again came along with police. The police officer Swarup Prakash Dhara accompanied her parents. She and her husband were brought to Joynagar Police Station. In the morning of 15.02.2006 Swarup Prakash Dhara permitted her husband to go away only after receipt of Rs. 4,000/- from her mother-in-law. He also took Rs. 1,000/- from her parents and thereafter he brought

the victim girl and her parents to his rented house at Joynagar. Accused Swarup Prakash Dhara broke her shankha (white bangle) and tried to wipe out her vermilion from her forehead. Swarup Prakash Dhara treated them with sweets and saw them off at Joynagar Railway Station. As per advice of Swarup Prakash Dhara her father contacted him on 19.02.2006 and came to his place along with the victim girl. Swarup Prakash Dhara asked her father to go to the Joynagar Police Station to sign the missing diary. The victim girl wanted to accompany his father to the police station but she was detained in the room by the accused. After departure of her father the accused forcibly committed rape upon her by tearing her kamiz. She suffered a lot and also bled from vagina. The accused also threatened her that if she disclosed the incident to anybody he would kill her husband. She initially did not disclose the same to anybody out of fear. After knowing from a housewife of the locality that the accused came to their area, she disclosed the incident to her parents. Though her father discouraged her to divulge it to anybody but she lodged the written complaint. She proved the written complaint (exhibit 1). She also made statements before the Magistrate which were recorded and whereupon she put her signature (exhibit 2). She also identified the appellant accused in the Court.

5. Joydeb Naskar (PW2) deposed that the victim was his daughter and that she had fled away from his house about 2 to 3 years back and married one Ashok Baidya against their Will. He lodged a missing diary at Joynagar Police Station. With the help of S.I., Swarup Prakash Dhara of Joynagar Police Station he was able to bring his daughter and her husband to Joynagar Police Station. As per request of S.I., Swarup Prakash Dhara, he took his daughter to the residence of the accused after about 4/5 days of the incident of recovery. On reaching there he was told by the accused to go to the Joynagar Police Station to sign the missing diary which was not signed earlier and his daughter was left behind in the house of the accused. After returning from police station he took his daughter from the house of accused. After about 20 days on receipt of a letter from SDPO, Baruipur visited his office along with his daughter and came to learn that his daughter was raped by S.I. Swarup Prakash Dhara. He also confirmed the fact from his daughter and his wife. His daughter made a statement before SDPO which was recorded by C.I. SDPO, Baruipur visited his house thrice and had talk with his daughter in seclusion. Being questioned, the SDPO said that as Swarup Prakash Dhara had raped his daughter, he would secure punishment of S.I. Swarup Prakash Dhara. He requested the SDPO not to take such measure as S.I. Swarup Prakash Dhara might lose his job.

6. Sankar Kumar Shit (PW3) was a formal witness who only deposed that accused Swarup Prakash Dhara was a tenant under him and that he left the said tented place on 14th of May, 2006.

7. Gita Rani Shit (PW4) was wife of PW3 and was tendered by the prosecution for cross-examination. However, defence declined to cross-examine her.

8. Ashok Baidya (PW5) deposed that in view of a love affair in between him and the victim girl, both of them left their respective houses on 13th February, 2006 at about 11.30 P.M. and their marriage was held in a temple of the village. After marriage they ultimately came to his mother's place at Subhasgram. On 14th of February, 2006 the parents of his wife came there for taking back the victim but she refused to return to her father's place. At around 1.30 mid-night, S.I. Swarup Prakash Dhara along with other police personnel and parents of the victim came there and took him and his wife to Sonarpur Police Station and, thereafter, to Joynagar Police Station. On the next day after arrival of his mother he was released. After about 10/12 days, he met the victim at Gocharan Railway Station when she reported to him about the incident of rape committed upon her by the accused in the afternoon of 19th of February, 2006 and threatening of the accused. He advised the victim to lodge a complaint before police. Thereafter he contacted T.V. Channels. T.V. Channels disclosed the incident.

9. Mrinal Kanti Naskar (PW6) being the headmaster of Dhosa Chandaneswar N.C. High School, P.S. Dhosa, proved the certificate issue by him under the letterhead of the school under his signature certifying that the victim was reading in the school in Class XI in 2005-06 and that her date of birth as per admission register was on 13th of April, 1999. He proved the certificate and his signature thereupon (exhibit 3 and 3/1).

10. ASI, Soumen Dalal (PW7) was declared hostile by the prosecution as he did not support his statements already recorded by the Investigating Officer u/s 161 Cr. P.C.

11. Dr. U.P. Ghosal (PW8) deposed that on 12.07.2006 while he was posted at A.C.M.O.H. (Medicolegal), South 24-Parganas at Alipore, he examined the victim in connection with Joynagar Police Station Case No. 92 dated 16.05.06 u/s 376 of the Indian Penal code and prepared a medical report opining that the victim was habituated with sexual intercourse and opinion of age can be given after receiving of X-ray examination report. He also examined on 12.06.2006 the accused Swarup Prakash Dhara and gave a report (exhibit 5) that he was not incapable of sexual intercourse.

12. Ratan Kumar Das (PW9) deposed that on 17th of May, 2006 while he was posted at Baruipur as J.M. in-charge he recorded the statement of victim girl u/s 164 Cr. P.C. in connection with Joynagar Police Station Case No. 92(5)06 u/s 376 Indian Penal Code. He identified the statement (exhibit 2) and the certificate given thereunder (exhibit 2/1)

13. Inspector, Bimal Kumar Pati (PW10) was the Investigating Officer of this case. According to him, on 16th of May, 2006 while he was posted as the Circle Inspector, Baruipur, the victim girl submitted a written complaint and that on the basis of the same he started Joynagar Police Station Case No. 92 dated 16.05.2006 u/s 376 Indian Penal Code against S.I., Swarup Prakash Dhara. He recorded the statement of

the victim and other witnesses, visited P.O. and prepared a sketch map, and collected GD Entry No. 1061 dated 14.02.2006 from Joynagar Police Station as well as the acknowledgement of taking custody of the victim girl by her father from a register of the police station. He arranged for medical examination of both arrested accused and the victim girl, and recording of the statements of the victim girl u/s 164 of the Cr. P.C.. He collected medical examination reports of the victim and the accused and after investigation submitted charge-sheet u/s 376 Indian Penal Code against the accused.

14. Mr. Shekhar Basu, learned counsel appearing for the appellant accused submits that the order of conviction and sentence are not sustainable in law as a false case was fabricated against the appellant accused at the behest of the then SDPO, Baruipur, C.I. Baruipur, the victim girl (PW1) and her husband (PW5). He further submits that the victim girl (PW1) can not be called a "sterling witness" as she gave different versions at different points of time regarding the incident of rape as well as the cause of delay. According to him, though the victim deposed that she suffered injury on her private parts on account of the sexual violation and her kamiz was torn, but her father who returned to the place of accused to take her back did not say anything about the same. According to him, PW2 also did not say that he found the dress of the victim was torn or she was found to be tormented for the alleged sexual violation. He next submits that though the victim (PW1) stated that she handed over her wearing apparels which were smeared with blood and semen to the police but it was denied by the Investigating Officer (PW10).

15. He next submits that from the evidence of PW1 it came out that on the very date of incident (19.02.2006), She sent a complaint and that after 20/25 days she made a further complaint which was taken down by CI (PW10) in the office of SDPO, Baruipur. But none of said complaints were produced in Court during trial. Again though victim's husband (PW5) claimed that after 10/15 days of the incident of 19th of February, 2006, he met with the victim at a railway station when the victim disclosed to him the incident of rape but he did not take any step to lodge a complaint with the police. As such, according to him, the assertion of the victim in the complaint that she could not file earlier being frightened was not at all believable.

16. He also submits that though the written complaint should have been received by the O.C., Joynagar Police Station for starting the case but it was taken by the Circle Inspector (PW10) for starting the specific case without any explanation.

17. He next submits that though the victim (PW1) alleged that she being accompanied by his father (PW2) came to the Court to give her statements before learned Magistrate but it came out from the evidence of the Magistrate (PW9) that victim was produced before him by one constable Alo Nandi.

18. He further submits that it was apparent from the evidence of the father of the victim (PW2) that in the last part of April or early part of May, 2006, the SDPO Baruipur and CI Baruipur came to his house thrice and they had discussion with the victim. At least on two occasions they talked with victim in exclusion of all others and that SDPO lastly assured of securing conviction of the appellant/accused. This goes to show that in connivance with the then SDPO and CI (PW10) a false complaint was lodged against the appellant accused through the victim (PW1).

19. Mr. Basu further submits that the victim (PW1) did not state some vital facts during her examination u/s 164 Cr. P.C. and that the said omissions being vital in nature went to the root of the prosecution case. He next submits that at the relevant time admittedly the appellant accused was residing in a tenanted house and hence the mention of official quarter in the charge framed against him was misleading.

20. He further submits that the letter written by the victim (PW1) addressed to the SDPO was identified by the victim in the Court as written by her but the same without being marked as an exhibit was marked "X" for identification by the learned Court. According to him, learned trial Court should have marked the same as an exhibit and relied upon the same. He further submits that said document rather belied the story of rape of victim.

21. According to Mr. Basu as the statements recorded u/s 164 Cr. P.C. were not put to the accused during his examination u/s 313 Cr. P.C., learned trial Court should not have relied upon the same.

22. Last but not the least, important submission is that there was no evidence of abduction and as such the charge u/s 366 Indian Penal code was not proved at all. Accordingly, he prays for setting aside the order of conviction and sentence passed by learned trial Court.

23. Per contra, the learned counsel appearing for the respondent/State submits that the evidence of the victim girl regarding her detention in the room of accused SI, Swarup Prakash Dhara on 19th of February, 2006 around 5 P.M. and committing rape upon her by the accused at that time during absence of her father was amply proved from the other evidences on record. He further submits that the evidence of the victim girl on this score found corroboration from the evidence of her husband (PW5), her father (PW2) as well as by the learned Magistrate (PW9) who recorded the statements of the victim u/s 164 Cr. P.C.

24. He next submits that the contradictions and omissions with reference to some statements of the victim as referred by the appellant's counsel were insignificant in nature and had no bearing on the main case. He also submits that the allegation of hatching a conspiracy against the appellant accused by the then SDPO and CI in connivance with the victim girl (PW1) and her husband (PW5) was a wild allegation. According to him, no reason was highlighted by the defence as to why those persons will make a conspiracy against the appellant accused for lodging a false

complaint of rape against him.

25. He further submits that non-production of alleged earlier complaints did not vitiate the case as the allegation of rape stood proved by the evidence on record. According to him, the case stood well proved at least so far it relates to the offence u/s 376(2)(a)(i)(ii) of the Indian Penal Code.

26. During hearing Mr. Basu referred the case law of [Rai Sandeep @ Deepu Vs. State of NCT of Delhi](#), to impress upon this Court that if the victim girl deposed truthfully on all points and her evidence stood the test of cross-examination in all matters then she could be described as a "sterling witness" and that an accused can be convicted on the basis of evidence of said witness even without corroboration.

27. We have considered the submissions made by learned counsel for the parties in the backdrop of the evidence on record. The facts of eloping of the victim with his boy friend, marrying him in a temple, recovery of the victim by her parents and other relations with help of a police party under the leadership of appellant/accused in the night of 14th of February, 2006 are not disputed. It was specific case of the victim girl (PW1) that as per instruction of the appellant accused her father took her to the house of the accused on 19th of February, 2006 around 5 P.M. and that as per direction of the accused her father left for Baruipur Police Station to put his signature on the missing diary keeping her in the custody of the accused. This piece of evidence remained unshaken in spite of the lengthy cross-examination by the defence. This also found ample corroboration from the evidence of her father (PW2).

28. It is true that though the victim girl deposed as to how the time was fixed for coming to the residence of the accused, but she did not state the same before the Investigating Officer at the time of her recording of statements u/s 161 Cr. P.C. The appellant tried to highlight those omissions as vital omissions. Unfortunately, we do not agree on this issue. The statements given by the witnesses before the police are meant to be precise statements and cannot take the place of evidence in the Court. Where the omissions are vital they merit consideration, but mere small omissions will not justify a finding by a Court that the witness concerned was self-contained liar. The statements of the victim girl on the point of making a phone call by her father to the accused on 19.02.2006 in the morning and then again making a phone call in the afternoon for coming to the place of the accused were not of much importance. As such, omissions on those points do not require serious consideration.

29. The victim (PW1) categorically deposed that though she suffered injury on her private parts on account of the sexual violation by the accused and there was also tearing of her kamiz but she did not mention the same to her father who returned there to take her back. As such it was natural that the father (PW2) was not aware of the incident, as victim did not disclose the same to him on that day.

30. The victim stated that she handed over her wearing apparels to the Investigating Officer. But the Investigating Officer denied the same. This only goes to show that

there were conflicting versions on this issue. But this by itself cannot throw away the prosecution case of rape if it is otherwise proved.

31. It is true that the victim's husband (PW5) claimed that after 10/15 days of the incident of 19th February, 2006, he learnt the same from the victim and he advised the victim to lodge a complaint to police. It is true that victim's husband (PW5) did not lodge any complaint with police even after knowing the incident. It came out that victim's husband (PW5) used to earn his livelihood earlier by driving auto-rickshaw and at the time of giving his evidence in Court by working as a daily labourer. It clearly shows that he was coming from the lower strata of the society. Admittedly, the accused was a police officer. This goes a long way to explain why PW5 did not dare to file the complaint in the police station against a police officer.

32. During evidence it came out that the victim sent the complaint to the police under very date of the incident, later on sent a complaint to the office of SDPO, Baruiapur and that her complaint was also noted down by CI in the office of SDPO, Baruiapur after about 20/25 days of the incident. Out of those complaints one written to the SDPO was produced in Court and was proved by the victim as her complaint written and signed by her. The learned counsel of the appellant/accused was much vocal for not marking said document as an exhibit. According to him said document belied the story of rape upon the victim. We are of the opinion that said document which was admitted by the victim (PW1) as a letter written and signed by her could have been marked as an exhibit. The appellant/accused is at liberty to refer the same and to rely upon the same. From said letter dated 20.05.2006 it is apparent that there was an incident in which the appellant/accused was the oppressor and the victim PW1 was the oppressed. It further appears therefrom that the victim was skeptic as to the result of the medical examination as three months had elapsed. It further appears therefrom that the victim was under tremendous mental agony as the matter became known to the public through media, as the inmates of her father's house were not sympathetic to her, and as the accused being a police officer was in a position to take further revenge against her. Admittedly, this document rather supports the prosecution case that on 19th February, 2006, there was an incident in the residence of the accused when accused and the victim were staying alone. The incident happened therein was within the special knowledge of the victim and the accused only. The victim claimed that the accused committed rape upon her. The accused, however, did not state what happened in between him and victim on the relevant date and time. It is true that the accused has a right to maintain silence. But the flat denial of the accused that the victim and her father did not come to his place in the evening of 19th of February, 2006 was found to be false.

33. It came out from the evidence on record that the victim was recovered from her husband's place by her parents with the help of accused police officer and other police personnel. It also came out that the father of the victim had a soft corner for the accused who took a leading role in the act of the recovery of the victim from the

house of PW5 whom she married against the wish of her parents. It further appears that the parents, even after knowing about the incident, were not initially willing to take any step against the accused and were rather trying to get the victim married in some other place by keeping the incident a secret. The situation in the house of the victim as it came out during her evidence explained as to why the victim initially did not disclose the incident to her parents, why she approached the police officer by writing a letter, and why she ultimately lodged a complaint belatedly. The peculiar situation of the victim in her father's house amply explained the delay in lodging the FIR in this case.

34. It is true that the then SDPO, Baruipur visited the house of victim's father thrice and had discussion with victim in seclusion and ultimately assured of taking steps for securing conviction of the accused as he had committed the offence of rape. We do not find any illegality in the assurance given by the SDPO to the father of the victim on this count. As the matter already came out in the T.V./press that a police officer subordinate to him was the accused of a rape incident, he had no option but to assure the victim's family that he would secure conviction of the accused as he committed rape upon the victim. That assurance in the backdrop of the facts and circumstances of the case, was a normal assurance and cannot be treated to be a conspiracy by any stretch of imagination.

35. Much argument was made for not putting the statements made by the victim before the Magistrate u/s 164 Cr. P.C. to the accused during his examination u/s 313 Cr. P.C. The copy of 164 statements was handed over to the accused before starting of trial. The victim did not state anything new in the 164 statements. The victim (PW1) gave vivid account of incident of rape during her evidence. The appellant/accused was asked by the learned trial Court as to whether he wanted to make any statement and/or comments regarding the evidence of the learned Magistrate (PW9) towards recording of his statements of the victim on 7th May, 2006 u/s 164 Cr. P.C. (Question No. 35). The appellant/accused did not state that he was not aware about making of the statements or that he did not know the contents of the same. He simply replied that he had nothing to say on that matter. The appellant/accused was a police officer in the rank of Sub-Inspector and not an illiterate person. Under these circumstances the defence plea on this point has no leg to stand upon.

36. It is true that at the relevant time the appellant accused being a police officer was residing in the tenanted house under his landlord (PW3). However, at the time of framing of the charge, said place was described as his quarter at Joynagar Police Station. There is nothing to show that for this minor discrepancy the accused was misled or was prevented to take his defence properly. There is also nothing to show that the appellant accused was prejudiced in any way for said inadvertent error in the charge form. As such said error had no bearing in the ultimate outcome of the case.

37. There is no illegality in the act of receiving of the written complaint by the circle inspector of police instead of the officer-in-charge of the police station at the P.S. An officer higher in the rank of O.C. being present at police station can always receive a written complaint disclosing a cognizable offence and start a specific case.

38. Similarly it is not at all a thing to be considered regarding the alleged discrepancy in between victim girl (PW1) and Magistrate (PW9) as to who accompanied victim girl to the Magistrate. It is quite natural that victim girl will come to Court for recording her statement u/s 164 Cr. P.C. being accompanied by a relation (here her father). Again it is also a common practice that victim girl will be produced before learned Magistrate by a police personnel (here a lady constable) for being identified.

39. Admittedly, the medical examination of the victim was held after about three months. As such said medical evidence was not of much help to the prosecution. The doctor opined at that time that the victim was in the habit of having sexual intercourse. As the victim was started to reside with her husband (PW5) by that time there was no abnormality in said observation of the doctor (PW8) in this regard.

40. It is true that the appellant/accused took a leading role in the matter of recovery of the victim from her husband's place on the strength of a missing diary lodged by her father and separated the victim from her husband in the process. But that cannot be a ground for lodging a false case of a rape by the victim against the police officer. Even in this 21st century a rape victim is still regarded almost as an outcast in our society. It also came out that the victim and her husband came from the lower strata of the society. It is hardly believable that persons coming from that level of the society will lodge a false complaint of rape against a police officer by jeopardizing not only their security but also the social respect of the victim.

41. In this connection, the observations of the Hon'ble Supreme Court in the case of [State of Punjab Vs. Gurmit Singh and Others](#), as reproduced below may be referred:

19. In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.

42. The appellant/accused was a police officer. The victim was a minor. She was called in the residence of the accused along with her father. Thereafter the father was sent to the police station on the plea of doing some work and in the absence of the father the rape was committed upon her. Under those circumstances, the conviction of the appellant u/s 376(2)(a)(i)(ii) of the Indian Penal Code is found to be justified. The prescribed sentence for commission of offence was rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life together with fine. The learned trial Court awarded the minimum sentence namely rigorous imprisonment for 10 years together with a fine of Rs. 10,000/- in default rigorous imprisonment for six months for the offence u/s 376(2)(a)(i)(ii) of Indian Penal Code. The sentence cannot be said to be harsh or unjust by any stretch of imagination. Rather the learned trial Court imposed the minimum substantive sentence namely rigorous imprisonment for 10 years though an order of imprisonment for life could have been passed.

43. In this case the appellant/accused was also convicted u/s 366 of the Indian Penal Code which runs as follows:

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place 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 shall be punishable as aforesaid].

44. Abduction was defined u/s 362 of the Indian Penal Code as follows:

362. Abduction.-Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

45. In the case in hand there is no evidence within the four corners of the record that the appellant/accused either by applying force, or by any deceitful means induced victim to go from any place. If that be the position then there was no question of abduction within the meaning of Section 362 of the Indian Penal Code. As such the question of applying Section 366 does not arise.

46. We are of the opinion that there was no material to prove the charge u/s 366 of the Indian Penal Code against the appellant/accused. Accordingly, the order of conviction and sentence for commission of offence u/s 366 of the Indian Penal Code is hereby set aside.

47. As a result the appeal is allowed in part. The order of conviction and sentence for commission of offence u/s 366 Indian Penal Code is hereby set aside. However, the order of conviction and sentence for commission of offence u/s 376(2)(a)(i)(ii) of the Indian Penal Code is hereby affirmed.

48. The office is hereby directed to return the lower Court records along with a copy of the judgment for information and record.

49. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.

Tapen Sen, J.

I agree