

compel her to marry some unknown person outside the State, or with knowledge that she might be forced or seduced to illicit intercourse by others and that in the night of 27.09.2016, he repeatedly had sexual intercourse with the victim in a lodge at Raipur against her will and also subsequently took her to Jaipur where he raped her and shifted her from place to place for the purpose of selling her to different persons for illegal gain of money and ultimately with the knowledge that the victim might be engaged for sexual exploitation, he handed over her to one Bikram Baghei at Gwalior in the State of Madhya Pradesh receiving cash of Rs.70,000/- (rupees seventy thousand) from him and on 27.09.2016, he threatened the victim to kill to satisfy his lust and subsequently threatened her asking her not to disclose the incidents before the police.

The learned trial Court vide impugned judgment and order dated 24.07.2019 found the appellant guilty of the offences charged and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- (rupees ten thousand), in default, to undergo rigorous imprisonment for six months more for the offence under section 366 of the I.P.C., rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo rigorous imprisonment for three months more for the

offence under section 370A of the I.P.C., rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- (rupees ten thousand), in default, to undergo rigorous imprisonment for six months more for the offence under section 376(2)(n) of the I.P.C. and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo rigorous imprisonment for three months more for the offence under section 506 of the I.P.C. and all the substantive sentences were directed to run concurrently.

2. The prosecution case, in short, as per the first information report lodged by Bani Nag (P.W.3) before the A.S.I. of Tikrapada outpost on 01.10.2016 is that the appellant was a tantrik locally known as 'Tarini Baba' and he used to move around different villages holding photo of goddess Tarini and mesmerize the villagers by canvassing the greatness of 'Maa Tarini'. On 26.09.2016 around 7.00 a.m., P.W.3 along with his two sons had been to their cultivable lands and at that time, his two daughters, i.e. the victim (P.W.1) and her elder sister were present in the house. The appellant came to the house of the informant and disclosed the powers of 'Maa Tarini' before the victim and her elder sister. He also called the informant and his sons and in their presence, the appellant displayed his supernatural powers and disclosed some unfortunate incidents

that had taken place in their house in the past. With regular visits to the house of the informant, the appellant gained confidence of the family members of the informant and assured them to remove the curse on their family by performing puja of 'Maa Tarini'. Accordingly, one puja was performed one day and on the very next day, the two daughters of the informant were found missing from the house. In spite of thorough search, the informant and his family members could not locate the whereabouts of the victim and her elder sister. On 29.09.2016 around 7.00 a.m., the victim (P.W.1) called her brother-in-law (P.W.5) in his mobile phone and intimated him that she was in the custody of the appellant and if her father (informant) and others would try to enquire about her whereabouts from the family members of the accused, then the appellant had threatened to kill her. The appellant also intimated P.W.5 over phone that if any case is filed against him, then he would kill the victim.

On receipt of the said report, the A.S.I. of Tikrapada outpost forwarded the same to the Inspector in-charge of Saintala police station for registration and accordingly, Saintala P.S. Case No.214 dated 02.10.2016 was registered under sections 363/366 of the I.P.C by the I.I.C. and one Sunil Kumar Soren (P.W.17), S.I. of Police was directed by the I.I.C. to take

up investigation of the case. During course of investigation, P.W.17 examined the witnesses, visited the spot, prepared the spot map, issued requisition to S.P., Bolangir to ascertain the call details record (CDR) in respect of SIM Card Nos.9438552499, 7804910948 and 7326874392. It was also ascertained that the appellant used one of the SIM cards and the victim used the other two and that the SIM card of the appellant was operated from village Bhadra during the relevant period. Thereafter, the I.O. traced the appellant from village Bhadra and brought him to the P.S. The I.O. also ascertained from the C.D.R. that the victim was staying at Gwalior during the relevant period and thereafter, he sought permission of S.P., Bolangir to proceed to Gwalior in the search of the victim. Thereafter, the I.O. along with other police staff and the parents of the victim proceeded to Gwalior and with the help of the Station House Officer of Tighra P.S., Gwalior, they could trace the victim from the house of one Baghel family situated at A.B. Road, Lashkar, Gwalior. The I.O. examined the victim (P.W.1) and recorded her statement, however, the persons present in that house declined to disclose their identity and the neighbours of Baghel family also did not cooperate in the matter, rather they all insisted for recovery of money paid by them to the appellant. The I.O. gave the custody of the victim girl to her parents. During the course of

investigation, the I.O. ascertained that the victim was sold and the appellant had collected some money though the appellant denied such allegations. On return to the police station, the I.O. further examined the victim, arrested the appellant and sent the victim so also the appellant to C.H.C., Saintala for their medical examination. He also seized the wearing apparels of the victim and the appellant as per seizure list Ext.1 and Ext.6 respectively. He also seized the biological samples of the appellant and the victim as per seizure lists Ext.7 and 8 respectively which were sent to R.F.S.L., Sambalpur for chemical analysis and opinion and on completion of investigation, P.W.17 submitted charge sheet against the appellant on 18.02.2017 under sections 366/376(2)(n)/370(2)/370-A(2)/294/506/427 of the Indian Penal Code.

3. The learned trial Court on 03.01.2018 framed the charges against the appellant as already stated and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

4. The defence plea of the appellant is one of denial. It is pleaded that in order to harass him, a false case has been foisted.

5. During course of trial, in order to prove its case, the prosecution examined as many as eighteen witnesses.

P.W.1 is the victim. She supported the prosecution case and stated as to how the appellant kidnapped her, raped her at different places and ultimately left her at the house of Vikram Baghel at Gwalior.

P.W.2 Linga Chandan, who is a co-villager of the informant, stated about the kidnapping the victim.

P.W.3 Bani Nag, who is the father of the victim, is the informant in the case.

P.W.4 Nrupa Bhoi is a co-villager of the informant and he stated about missing of the victim and his sister from the village.

P.W.5 Umakanta Bag, who is the son in-law of the informant stated about the threat given to him by the appellant over phone that if he would make any enquiry about the daughters of the informant, he would kill him and further warned that if anybody would file any case against him, he would face dire consequences.

P.W.6 Biswanath Nag is the younger brother of the informant and he got the information from the informant that the appellant had kidnapped his two daughters.

P.W.7 Pinku Nag, who is the minor son of the informant, is a post occurrence witness.

P.W.8 Karuna Sindhu Pasayat is the scribe of the F.I.R. (Ext.4).

P.W.9 Dayanidhi Nag, who is the cousin brother of the informant stated that he came to know about the incident on being informed by P.W.3.

P.W.10 Padmalochan Bagarty is a co-villager of the informant and stated that there was a discussion in their village that the appellant took away the daughters of the informant.

P.W.11 Dr. Parimita Gouda was the Medical Officer posted at C.H.C., Saintala who examined the victim on police requisition and proved her report Ext.2/1.

P.W.12 Netra Bhoi, who is a co-villager of the informant, stated that one day the appellant came to his house and in his absence, he impressed upon his daughters that unless some puja is performed, they would die. He further stated that on the same day, the appellant went to the house of the informant and performed some puja in the night and some days thereafter, the appellant took away the daughters of the informant with him.

P.W.13 Dr. Saumya Ranjan Nayak was the Medical Officer posted at C.H.C., Saintala who examined the appellant on police requisition and proved his report Ext.5.

P.W.14 Sridhara Bhoi, who is a co-villager of the informant stated that he allowed the appellant to construct a house in his land and after residing there for about three years, he heard about the complaint made against the appellant that he was selling girls of the village at other States and on hearing such complaint, he asked the appellant to vacate the house. However, the said witness was declared hostile by the prosecution.

P.W.15 Dibakar Bhoi and P.W.16 Sanjay Kumar Bhoi were the home guards attached to Saintala police station. They are the witnesses to the seizure of wearing apparels of the appellant and biological samples of the appellant as per seizure lists Ext.6 and Ext.7 respectively and also the wearing apparels of the victim and her biological samples as per seizure lists Ext.1 and Ext.8.

P.W.17 Sunil Kumar Bhoi is the Investigating Officer of the case.

P.W.18 Gopinath Mahakud was the A.S.I. attached to Tikrapada outpost and stated about presentation of written

report by the informant which was sent to I.I.C., Saintala police station. He has also proved the F.I.R. marked Ext.4.

The appellant examined himself as D.W.1.

6. The learned trial Court after analyzing the oral and documentary evidence on record came to hold that at the time of commission of offence, the victim was aged about seventeen years and she was a minor. It has been further held that the appellant was compelling the victim to marry to some unknown person outside the State. It has been further held that the consent of the victim is immaterial in determination of the offence of trafficking and that the prosecution has successfully proved that the appellant by using force or by threat committed the offence of trafficking. It was further held that during transit, the victim was under constant fear and was under surveillance of the appellant and therefore, she did not raise any hue and cry. It was further held that from the evidence on record, the kidnapping of the victim by the appellant and commission of rape on her against her will as appears from the testimony of P.W.1 was found to be clear, cogent, consistent and trustworthy and the appellant not only kidnapped but trafficked and sexually exploited the victim, raped her repeatedly at two different places i.e. at Raipur and on the way to Jaipur and accordingly came to the conclusion that the prosecution has successfully proved the

charges under sections 366/376(2)(n)/370-A/506 of the I.P.C. against the appellant.

7. Ms. Jyotsnamayee Sahoo, learned counsel appearing for the appellant contended that there are discrepancies in the evidence of the victim (P.W.1), her father (P.W.3) and her brother (P.W.7) regarding the time when she was kidnapped by the appellant or left the house. Though in the first information report lodged by P.W.3, it is mentioned that two daughters of the informant were found missing since 26.09.2016 and the appellant was suspected to be involved in the offence of kidnapping, but the victim in her evidence has given a different story altogether and therefore, the prosecution case is not consistent. Learned counsel further argued that in the 164 Cr.P.C. statement, the victim has stated about the commission of rape on her on two occasions whereas in Court, she has stated that the appellant raped her thrice. Learned counsel further argued that from the evidence of the victim, it appears that during her journey with the appellant from place to place, she had got the opportunity to resist and complain before others regarding the alleged kidnapping but she did not complain anywhere which creates a doubt about the prosecution case. It has been further argued that though the victim allegedly stayed in a lodge at Raipur where the first incident of rape was allegedly

committed but no register of the lodge was seized, nor the Manager or the owner of the lodge has been examined to substantiate such aspect and to corroborate the evidence of the victim. It has been further argued that since the evidence of the prosecution is full of contradictions, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Arupananda Das, learned Additional Government Advocate, on the other hand, supported the impugned judgment and argued that not only the victim (P.W.1) but also her father (P.W.3) has stated that when the occurrence took place, the victim was aged about seventeen years and there is no challenge to the age of the victim by the defence. It has been further argued that even though so far as commission on rape on the victim in a sleeper coach bus on the way to Jaipur is not there in the 164 Cr.P.C. statement of the victim, but her evidence regarding commission of rape in the lodge at Raipur as well as in Ramkuikhediluva (Rajasthan) is consistent. It has been further argued that the victim was rescued from Gwalior from the house of one Vikram Baghel and the evidence in this respect is spoken to not only by the victim but also by her father (P.W.3) and the Investigating Officer (P.W.17). Learned counsel further submitted that minor contradictions appearing in the statement of the victim cannot be a ground to disbelieve her evidence and

therefore, the learned trial Court has rightly placed reliance on the evidence of the victim as well as other corroborative evidence to come to the conclusion that the appellant is the author of the crime. Learned counsel further argued that the sentence imposed by the learned trial Court cannot be said to be on a higher side under any stretch of imagination and such type of crime is now-a-days rampant in the society and the manner in which the appellant has conducted himself and kidnapped a minor girl from her lawful guardianship and committed rape on her on a number of occasions and left her at Gwalior, justifies the punishment imposed by the learned trial Court and therefore, the appeal should be dismissed.

8. Adverting to the contentions raised by the learned counsel for the respective parties, let me first deal with the age of the victim.

The victim during her evidence which was recorded on 9th April 2018 stated her age to be eighteen years and she stated that the occurrence in question took place in the month of September 2016. She further stated that at the time of commission of rape by the appellant on her, she was reading in Class-X at Chalki High School and she was aged about seventeen years. The father of the victim being examined as P.W.3 has also stated that the victim was aged about sixteen to seventeen years

at the time of occurrence and she had read up to Class-X. There is no dispute that no document from the school where the victim was prosecuting her studies was seized by the Investigating Officer nor her ossification test has been conducted to determine her age nor any birth certificate has been seized but when the evidence of the victim and her father (P.W.3) is consistent and it indicates that the victim was minor as on the date of occurrence and the evidence in this aspect has not been shaken in cross-examination and no suggestion has been given either to the victim or to the father by the learned defence counsel challenging the age of the victim, I am of the humble view that the learned trial Court has rightly come to the conclusion that the victim was aged about seventeen years at the time of commission of offence and she was a minor.

9. It is true that the first information report lodged by P.W.3 was registered on 02.10.2016 at Saintala police station wherein it has been mentioned that another daughter of the informant was also found missing since 26.09.2016 and she could not be traced out and in the evidence of P.W.1, it also appears that her elder sister was missing from her house and they searched for her at different places but could not trace her out and that P.W.1 has stated that even on the date of her deposition, her elder sister was missing and her whereabouts

was not known and the informant has also stated that her another daughter was found missing from the house for which he searched and enquired at different places but could not trace her out and it seems that there are some contradictions with respect to the date of missing of the elder sister of the victim from the house and the date of kidnapping of the victim but in this case, the discrepancies in that respect cannot be a factor to discard the prosecution evidence or to disbelieve the evidence of the victim and her father in view of specific charges framed against the appellant.

10. The victim (P.W.1) in her evidence has stated that at three places, rape was committed on her by the appellant. First time, rape was committed on her in a lodge at Raipur in the night where the appellant committed forcible sexual intercourse with her for three times, the second rape was committed inside a sleeper coach bus which was covered with screen and when the appellant took the victim to Ramkuikhediluva (Rajasthan) in the night, third rape was committed. In the 164 Cr.P.C. statement, the victim has not stated about the commission of the second rape in the sleeper coach bus and it has been proved through the Investigating Officer (P.W.17) that in the 161 Cr.P.C. statement also, the victim has not stated about the commission of rape on her in the sleeper coach bus. Moreover, from the evidence of the

victim, it appears that there were many passengers in the sleeper coach bus in which the appellant took her to Gwalior and that she did not inform the bus driver, conductor or any person about such act of the appellant. In view of the absence of any statement of the victim regarding rape committed on her by the appellant inside the sleeper coach bus on the way to Jaipur in her 161 & 164 Cr.P.C. statements, even if this part of the evidence of the victim is disbelieved, but the commission of rape on her inside the lodge at Raipur as well as Ramkuikhediluva (Rajasthan) has not been shaken at all. Non-seizure of the register of the lodge or non-examination of the owner/manager or any other employee of the lodge of Raipur by the Investigating Officer cannot be a factor to disbelieve the evidence of the victim that she stayed in the lodge at Raipur where first rape was committed on her by the appellant.

11. The contention of the learned counsel for the appellant that the victim (P.W.1) had the opportunity to raise objection or protest to the overt act committed by the appellant during course of her journey with him but she did not raise any objection which creates a doubt about the prosecution case, is not acceptable. It appears that the victim has stated that when the appellant committed rape on her, he threatened her for which she did not shout and learned trial Court has also rightly

discussed about such aspect in the impugned judgment and came to hold that the victim was completely under the fear and under surveillance of the appellant due to which she did not intimate such incident to any person including the staff of the lodge nor the driver, conductor or the passenger of the bus etc., and she was moving with the appellant to different locations which she had never seen in her life and during her transit, she was under constant fear and therefore, she felt it better to keep quiet or else she would be killed. It cannot be lost sight of the fact that the prosecution has proved that the appellant was a 'Tantrik' who performed some kind of puja in the house of the victim and stated that there was blood sacrifice in the house of the victim in the past and he created a belief in the mind of the victim and her family members by his miraculous activity which may be one of the factors for which the victim left the house alone when the appellant told her to leave the house in the morning without informing anybody. In such state of affairs, the non-protest of the victim before anybody while in the company of the appellant cannot be a factor to disbelieve the prosecution case.

12. The victim (P.W.1) has stated in her evidence that the appellant took her to one of his relative's house at Gwalior and there, he contacted to sell her to one Vikram Baghel at a

price of Rs.70,000/- (rupees seventy thousand) and left her in the house of Vikram Baghel and eight days thereafter, the Odisha police came with her father and rescued her from the house of Vikram Baghel. The evidence of the victim gets corroboration from the evidence of her father (P.W.3) as well as the Investigating Officer (P.W.17). P.W.3 has stated that after the appellant was arrested, he along with the police personnel and the appellant went to Gwalior to trace out the victim and some local police of Gwalior accompanied them and the appellant led them to a house where the victim was found. P.W.17 has also stated that on 29.10.2016, he proceeded to Gwalior with his staff along with the appellant as well as the parents of the victim and arrived there on 30.10.2016 where he contacted to the S.H.O. of Gwalior and requested him to assist them in the investigation and the victim was traced out from the house of one Vikram Baghel, situated at A.B. Road, Lashkar, Gwalior. It is true that none of the Baghel family members have been examined in the case, but when the evidence of P.W.1 is corroborated by the evidence of P.W.3 and P.W.17 and nothing has been brought out in the cross-examination of any of these witnesses to disbelieve this part of evidence, I am of the humble view that the prosecution has successfully established that after

kidnapping the victim, the appellant had taken her to Gwalior from where she was rescued by the Investigating Officer.

13. When it has been established by the prosecution successfully that the victim was minor as on the date of occurrence and her evidence is clear, cogent, trustworthy and above board and it gets corroboration from the evidence of other witnesses and circumstantial evidence that she was taken out of her lawful guardianship by using force and threat was given to her and the evidence of the victim about commission of rape on her on two occasions by the appellant has been successfully established so also about the criminal intimidation part played by the appellant, I am of the humble view that the learned trial Court has rightly convicted the appellant under sections 366/376(2)(n)/506 of the Indian Penal Code.

14. So far as charge under section 370A of the Indian Penal Code is concerned, it deals with exploitation of a trafficked person. According to the ingredients of this offence, if somebody knowingly or having reason to believe that a minor has been trafficked, in spite of such knowledge and belief, the minor is engaged for sexual exploitation in any manner, then the offence would be attracted. Trafficking of person has been defined in section 370 of the I.P.C. 'Exploitation' shall include any act of physical exploitation or any form of sexual exploitation as per

Explanation 1 to the said section and consent of the victim is immaterial in determination of the offence of trafficking as per Explanation 2. If the removal of a person is made either by using threats or using force or any other form of coercion or by abduction or by practising fraud or deception, it would attract the ingredients of the offence. The sexual exploitation as has been used in section 370A of the I.P.C. may be by the accused himself who has removed the victim by using threat, force, coercion, abduction or practising fraud or deception etc. or if he engages minor to be sexually exploited by another person. In the case in hand, even though there is no evidence on record that the victim was engaged for sexual exploitation by any other person but there is clear evidence of trafficking of the victim and sexual exploitation by the appellant himself and therefore, I am of the humble view that the learned trial Court has rightly found the appellant guilty under section 370A of the I.P.C.

15. In view of the foregoing discussions, I am of the humble view that there is no infirmity or illegality in the impugned judgment and the learned trial court has rightly found the appellant guilty under sections 366/376(2)(n)/370A/506 of the Indian Penal Code. The punishment imposed by the learned trial Court for the offences is no way excessive and therefore, I

am not inclined to interfere with the same which is accordingly confirmed and upheld.

16. Accordingly, the Jail Criminal Appeal being devoid of merits, stands dismissed.

Trial Court Records with a copy of this judgment be sent down to the learned Court concerned forthwith for information and necessary action.

Before parting with the case, I would like to put on record my appreciation to Ms. Jyotsnamayee Sahoo, the learned Amicus Curiae for rendering her valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to her professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only).

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 28th June 2023/PKSahoo/Sipun