

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 11th OF MAY, 2022

CRIMINAL APPEAL No. 11203 of 2019

Between

**MANOJ SAHU, S/O SUDAMA SAHU,
AGED ABOUT 24 YEARS,
OCCUPATION – AGRICULTURIST,
R/O VILLAGE RAFELI, P.S. &
DISTRICT UMARIYA (M.P.).**

..... APPELLANT

(BY SHRI SUSHIL KUMAR TIWARI – ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH P.S. UMARIYA, DISTRICT
UMARIYA (M.P.).**

..... RESPONDENT

(BY SHRI NARENDRA SINGH LODHI – PANEL LAWYER)

*This appeal coming on for **final hearing** this day, the Court
passed the following*

J U D G M E N T

This criminal appeal under Section 374(2) of Cr.P.C. is preferred by the accused/appellant being aggrieved by the judgment dated 13.12.2019 passed by Sessions Judge, Umariya, in S.T. No. 59 of 2017 (State of MP Vs. Manoj Sahu), whereby appellant has been convicted for commission of offence under Section 363 of IPC and has been sentenced to undergo rigorous imprisonment for two years and fine of Rs. 500/-, with default stipulations.

2. The prosecution case in brief is that on 14.09.2016 at about 02:15 p.m. Moorat Prasad Sahu (PW-1) R/o village Ratheli, P.S. Umariya District Umariya (M.P.) appeared at P.S. Umariya and lodged First Information Report, stating that he is a resident of Village Ratheli and is a farmer and labour. He is blessed with two sons and two daughters. His younger daughter Rinki is studying in Government Higher Secondary School, Karkeli in class-XIIth. Daily she used to go to school from home. On 12.09.2016, she after having meal at around 09:00 A.M. left for school but did not return home till evening. He searched his daughter in all his relative's house and at Karkeli and Umariya but he could not trace his daughter. His daughter is 17 years 06 months old. Her complexion is fair, her height is 05 ft. She is wearing blue kurta and white salwar of school dress and is also wearing white color shoes. She speaks Hindi and local language. It appears that someone has lured away his daughter. Manoj Sahu S/o Sudama Prasad Sahu of his village is also not in his home from the same day. He suspected that Manoj has kidnapped her daughter.

3. On the basis of above narration given by Mooratlal Sahu (PW-1), FIR (Ex. P-1) was registered in P.S. Umariya at FIR No.

461 of 2016 for commission of offence under Section 363 of IPC. After investigation charge-sheet was filed against accused before the Court of learned C.J.M., Umariya, who in his turn committed the case to the Court of Sessions.

4. Learned Sessions Judge, Umaria framed the charges against appellant/accused for commission of offence under Section 363 and 366-A of IPC. Appellant/accused abjured his guilt and claimed to be tried.

5. In order to prove its case, prosecution examined Mooratlal Sahu (PW-1), Smt. Lalli Bai (PW-2), Rinki Sahu (PW-3), Vivek Sahu (PW-4), Vinod Kumar Sahu (PW-5), Ramesh Singh (PW-6), Vipin Tiwari (PW-7) and S.N. Mishra (PW-8). The appellant/accused has not examined any witness in his defence.

6. The learned trial Court after considering the oral and documentary evidence on record convicted the appellant Manoj Sahu for commission of offence under Section 363 of IPC and sentenced him as stated herein above.

7. Learned counsel for the appellant has assailed the findings of the trial Court recorded in the impugned judgment and has submitted that learned trial Court has not properly appreciated

the evidence of prosecution witnesses. Prosecution has miserably failed to prove that at the time of elopement, Rinki was below 18 years of age. Despite that learned trial Court without any iota of evidence has convicted the appellant under Section 363 of IPC.

8. Learned counsel further submitted that it is a case of no evidence against the appellant/accused, and even if for the sake of argument, it is assumed that Rinki had gone with appellant/accused by that time she was above 18 years of age. Thus, the findings recorded by learned trial Court being against the material available on record are perverse and are liable to be discarded. Thus, it has been prayed that impugned judgment of conviction and order of sentence dated 13.12.2019 be set-aside and appellant/accused may be acquitted of offence.

9. Per contra, learned Panel Lawyer for the respondent/State has supported the impugned judgment and findings recorded by learned trial Court and has submitted that appeal has been filed without any merits. Hence, same be dismissed.

10. I have considered the rival arguments advanced by learned counsel for the parties and perused the trial court record and impugned judgment.

11. For an offence under Section 363 of IPC, prosecution is obliged to prove that at the time of kidnapping, prosecutrix/victim was below 18 years of age.

12. Mooratlal Sahu (PW-1) is the father of Rinki (PW-3). He has deposed that at the time of incident i.e. 12.09.2016, her daughter was 17 years and 06 months old. In his cross-examination, he has stated that date of birth of his daughter Rinki (PW-3) is not known to him. Lalli Bai (PW-2) is the mother of Rinki (PW-3) and wife of Mooratlal Sahu (PW-1), she has nowhere deposed that at the time of incident, her daughter was below 18 years of age. Thus, mother and father of prosecutrix have stated nothing about the exact date of birth of their daughter Rinki (PW-3). As such, from their evidence, it is not proved that at the time of commission of offence, Rinki (PW-3) was minor or below 18 years of age.

13. Rinki (PW-3) has deposed that she is educated up to Class - Xth. She does not know her date of birth. On the date of incident, she was a student of Class-Xth. She has stated that in Pragati Patrak (Ex.P-4) her date of birth is mentioned as 18.03.1999. In cross-examination she has stated that her exact date of birth is not known to her. Vivek Sahu (PW-4) is real brother of Rinki (PW-3). He has

also not stated anything about the exact date of birth of Rinki (PW-3). Vinod Sahu (PW-5) is the uncle of Rinki (PW-3) and brother of Mooratlal Sahu (PW-1). He has stated nothing about the age of Rinki (PW-3).

14. ASI Ramesh Singh (PW-6) has prepared the spot map (Ex.P-9). SI Vinipin Tiwari (PW-7) has arrested the accused and prepared the arrest memo (Ex. P-11). He has deposed that he had written letter (Ex.P-14) to the Principal of School for furnishing certificate about date of birth of Rinki (PW-3). S.I. S.N. Mishra (PW-8) has recorded the statements of Rinki, Lalli Bai and Mooratlal Sahu under Sections 161 of Cr.P.C.

15. In this case, parents of the Rinki (PW-3) have deposed nothing about her exact date of birth. Therefore, Rinki's age is not proved by the evidence of her parents. Rinki (PW-3) herself is not aware about her date of birth.

16. Learned trial Court on the basis of date of birth mentioned in Pragati Patrak (Ex. P-4) has reached to the conclusion that date of birth of Rinki (PW-3) is 18.03.1999. Hence, at the time of commission of offence i.e. 12.09.2016 Rinki was below 18 years of age. But it is to be noted that prosecution has not examined any

Headmaster, Teacher or anyone else from the school to prove the genuineness and correctness of Pragati Patrak (Ex.P-4) and date of birth mentioned therein. Thus, as far as the admissibility of date of birth mentioned in Ex.P-4 is concerned in want of evidence that is not worth admission. Therefore, learned trial Court was not justified in accepting the date of birth mentioned in Ex.P-4.

17. In this case, prosecution has not examined Principal, Teacher or any other responsible employees of the School, where from the alleged Pragati Patrak (Ex. P-4) has been issued, thus, there was a total lack of evidence on the part of prosecution to prove the age of Rinki (PW-3).

18. In *Murgan @ Settu Vs.State of Tamilnadu AIR 2011 SC 1691*, the Hon'ble Supreme Court held as follows:

“25. This Court in *Madan Mohan Singh & Ors. Vs. Rajni Kanty & Anr. (AIR 2010 SC 2933)*, considered a large number of judgments including *Brij Mohan Singh Vs. Priya Brat Narain Sinha (AIR 1965 SC 282)*, *Birad Mal Singhvi Vs. Anand Purohit (AIR 1988 SC 1796)*, *Updesh Kumar Vs. Prithvi Singh (AIR 2001 SC 703)*, *State of Punjab vs. Mohinder Singh (AIR 2005 SC 1868)*, *Vishnu vs. State of Maharashtra (AIR 2006 SC 508)*, *Satpal Singh v. State of Haryana (2010) 8 SCC*

714) : (2010 AIR SCW 4951), and came to the conclusion that while considering such an issue and documents admissible under Section 35 of the Evidence Act, the court has a right to examine the probative value of the contents of the document. The authenticity of entries may also depend on whose information such entry stood recorded and what was his source of information, meaning thereby, that such document may also require corroboration in some cases.

19. In *Birad Mal Singhvi v. Anand Purhoit AIR 1988 SCC 1796*, the Hon'ble Supreme Court observed as follows:

"15. The High Court held that in view of the entries contained in the Exs. 8, 9, 10, 11 and 12 proved by Anantram Shrama PW3 and Kailash Chandra Taparia PW5, the date of birth of Hukmichand and Suraj Prakash Joshi was proved and on the assumption it held that two candidates had attained more than 25 years of age on the date of their nomination. In our opinion the High Court committed serious error. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoyed by the law of the country is itself the relevant fact. To render a

document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded. In Raja Janki Nath Roy y Jyotish Chandra Acharya Chowdhary, AIR 1941 C141a Division Bench of the Calcutta High Court discarded the entry in school register about the age of a party to the suit on the ground that there was no evidence to show on what material the entry in the register about the age of the plaintiff was made. The principle so laid down has been accepted by almost all the High Courts in the country see Jagan Nath v. Moti Ram, AIR 1951 Punjab 377, Sakhi Ram v. Presiding Officer, Labour Court, North Bhar, Muzzafarpur, AIR 1966 Patna 459, Ghanchi Vora Samsuddin Isabhai v. State of Gujrat, AIR 1970 Guj 178 and Radha Kishan Tickoo v. Bhushan Lal Tickoo, AIR 1971 J & K 62. In addition to these decisions the High

Courts of Allahabad, Bombay, Madras have considered the question of probative value of an entry regarding the date of birth made in the scholar's register on in (sic) school certificate in election cases. The Courts have consistently held that the date of birth mentioned in the scholar's register of secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined, see Jagdamba Prasad v. Sri Jaganath Prasad (1969) 42 ELR 465 (All), K. Paramalai v. L.M. Alangaran (1967) 31 ELR 40 (Mad), Krishna Rao Maharu Patil v. Onmkar Narayan Wagh (1958) 14 ELR 386 (Bom)."

20. In *Alamelu and another v. State represented by Inspector of Police (2011) 2 SCC 385: AIR 2011 SC 715*, the Hon'ble Supreme Court held as follows:

"43. The same proposition of law is reiterated by this Court in *Narbada Devi Gupta v. Birendra Kumar Jaiswal ((2003) 8 SCC 745): (AIR 2004 SC 175)* where this Court observed as follows (SCC p.751, para 16): (at p.178 of AIR)

"16. The legal position is not in dispute that mere production and marking of a

document as exhibit by the court can not be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can vouch safe for the truth of the facts in issue."

21. In *CIDCO v. Vasudha Gorakhnath Mandevlekar AIR 2009 SC (Supp) 2845, it was held that -*

"18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent."

22. The above ratio clarifies the stand pertaining to entries in public documents and makes it obligatory for the court to test the authenticity of an entry regarding the date of birth of a person in public document. As for the Transfer Certificate Ex.P15 issued by the school is concerned that can not be accepted as proof of age because same has been obtained after the incident. Witness Rameshchandra Jaiswal (PW10) has not entered the entries in

admission register. Application form Ex.P14 filled at the time of admission in class-VI of PW10's school bear the signature of Ramesh, who has not been examined, although he is the person who got victim admitted in school. Thus, entries regarding date of birth shown in Ex.P13, P14 and P15 can not be considered as proof of the age. Reliance can be placed on *Sunil vs. State of Haryana (2010) 1 SCC 742*.

23. In *State of M.P. vs. Munna @ Shambhu (2016) 1 SCC 696* school certificate was not believed because the principal of school could not say on what basis the date of birth was recorded in school register and what was declared by the parents of girl at the time of her admission. In this case, entries made in Pragati Patrak (Ex.P-4) have not been proved by the prosecution. Even it has not been proved that Pragati Patrak (Ex.P-4) has been issued by the School or not, or is a forged one. Mooratlal Sahu (PW-1), father and Lalli Bai (PW-2) mother of the girl, in their deposition before the trial Court has not stated anything about the exact date of birth of their daughter. On the basis of aforesaid, it can be easily infer that the entry regarding age of the girl (PW-3) in Ex.P-4 is not worth reliance. Therefore, in the lack of the evidence of person of school

authority who issued Ex.P-4 certificate, no reliance can be placed and on the basis of date of birth written in Ex. P-4, it cannot not be deduced that at the time of incident Rinki (PW-3) was below 18 years of age. Thus, I am constrained to hold that the evidence furnished by prosecution is not sufficient to prove her age thereby rendering it unfit for consideration.

24. On the basis of discussion of the prosecution evidence, it is clear that the prosecution has not been able to establish that at the time of occurrence, Rinki (PW-3) was below 18 years of age. It is the cardinal principle of criminal jurisprudence, prosecution has to establish its case beyond reasonable doubt, which has not been adhered to for the purpose of Ex.P-4. Consequently, it is hold that prosecution has not been able to prove that PW-3 was below 18 years of age at the time of incident.

25. Mooratlal Sahu (PW-1), Lalli Bai (PW-2), Vivek Sahu (PW-4) and Vinod (PW-5) has deposed nothing against the accused. Thus, there is a lack of evidence of kidnapping against appellant/accused.

26. As far as the reliability and truthfulness of the evidence of Rinki (PW-3) is concerned, she has deposed that she on her own free will had gone Katni from Karkeli. She had made a call to

Manoj and thereafter she went to Nagpur with Manoj and remained with him there, for 06 to 07 months and thereafter came back to Umaria. They both were residing separately in Nagpur. In cross-examination she has specifically stated that she had gone to Nagpur on her own free will. She has nowhere stated that she was taken to Nagpur by Manoj. There is no evidence on record to show that she was taken forcibly or was induced by appellant/accused to go to Nagpur.

27. On meticulous scrutiny of evidence of prosecutrix (PW-3) it can be easily inferred that prosecutrix who was above 18 years of age at the time of occurrence had gone with the accused voluntarily.

28. In *S. Varadraján Vs. State* In *S. Varadraján vs. State of Madras AIR 1965 S.C. 942* where a minor girl on the verge of 18 years grew some infatuation for the accused living next door and met him at a particular place, Supreme Court held that:

"It must, however, be borne in mind, that there is a distinction between "taking" and "allowing a minor to accompany a person". The two expressions are not synonymous though one would like to guard ourselves from laying down that in no conceivable circumstances, can the two be regarded as meaning the same thing for the purpose of Section 361, 1.P.C. It would be sufficient

if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian, merely because after she had actually left her guardian's house or the house where her father had kept her, joined the accused and the accused helped her in the design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played for by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

29. In *Lakhanlal Vs. Sate of M.P. 2004(4) MPLJ 423*, it is held that :

“The first essential, to be establish for the offence under Section 366 of the Indian Penal Code is that the accused kidnapped or abducted a woman. To constitute the offence of kidnapping, it must be proved that the girl kidnapped is under 18 years of age and the burden remains on the prosecutrix to prove it.”

30. In this case prosecution has failed to establish that at the time of commission of offence the age of prosecutrix was below 18 years of age. Even if it was on the border line, there is sufficient evidence to establish that she attained the age of discretion. Where a prosecutrix at the age of discretion leaves her parental home and the accused simply facilitates her in fulfillment of her desire, it can not be said to be an act of kidnapping or abduction.

31. Accordingly, it is held that prosecution has miserably failed to prove the guilt of the appellant/accused beyond reasonable doubt, therefore, the instant **Criminal Appeal is allowed** and the judgment of conviction and order of sentence dated 13.12.2019 convicting the appellant under Section 363 of IPC is set aside. Appellant Manoj Sahu is acquitted from the charges under Section 363 of IPC. His bail bond stands discharged. He is entitled to receive back the fine amount from the trial Court.

32. Trial Court record alongwith a copy of judgment be sent down to the trial Court immediately.

(Dinesh Kumar Paliwal)
Judge