

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 672 of 2016

Haradhan Dutta

-vs.-

State of West Bengal & Anr.

For the Appellant : Mr. Jayanta Narayan Chatterjee,
Mr. Apalak Basu,
Mr. Nazir Ahmed,
Ms. Swagata Das,
Ms. Nandini Chatterjee,
Ms. Jayashree Patra,
Ms. Chandrima Roy Karmakar

For the State of West Bengal : Mr. Avik Ghatak

Heard on : 12.02.2021, 19.02.2021, 26.02.2021,
05.03.2021 & 12.03.2021

Judgment on : 30th April, 2021.

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.09.2016 and 28.09.2016 passed by the learned Additional District & Sessions Judge, F.T. Court No.II, Bichar Bhawan, Calcutta, in connection with Sessions Trial No. 2(4)2013 arising out of Sessions Case No. 05 of 2013 where the appellant was held guilty for

commission of offences punishable under Sections 363 and 366A of the Indian Penal Code.

The learned Trial Court was thereafter pleased to sentence the accused as under :

- i. The convict Haradhan Dutta is sentenced to suffer imprisonment for five (5) years and to pay fine of Rs.10,000/- for the offence under Section 363 of I.P.C. i.d. to suffer R.I. for six months.
- ii. The convict Haradhan Dutta is also sentenced to suffer R.I. for seven (7) years and to pay fine of Rs.10,000/- i.d. to suffer R.I. for six months for the offence under Section 366A of I.P.C.

The genesis of the case relates to a statement of the victim girl namely, Rangila Khatoon, recorded by Sub-Inspector of Police attached to Detective Department on 06.08.2012 pursuant to which Burtolla Police case No. 344/2012 dated 06.08.2012 was registered for investigation under Section 366A/372/511/120B of the Indian Penal Code.

The statement of the victim which has been treated to be the First Information Report of the instant case is as follows:

“My name is Rangila Khatoon. I am 14 years old. My residential address is, Village : Nohalberia, Post- Batul, P.S. Bagnan, District: Howrah. I have studied upto class V in Nohalberia School. My father Taj Mohammad and mother Sabana Begam live in Lucknow. My two younger brothers and a sister also live in Lucknow with father and mother since long. I visited there 2/3

times. My father works in a hotel there. I live with my grand mother Nurbanu Begum in our village. Our financial condition is not stable. As my grandmother was unable to afford my studies, I had to engage myself as a house maid (for washing utensils) for sometimes. Almost 15/20 days back as I rang my father, he told me to go to Lucknow to stay with them. Since our Eid festival is ensuing, so I was been to visit my father and mother. Today (6.8.12), in order to go to Lucknow, I set off from home, alone in the morning. The train was scheduled to depart in the night, still I left home well before. When I stepped down on platform no. 11 in the Howrah Station, a man approached me and asked my whereabouts. I told him all. The man told me that I had enough time in hand, before the schedule departure of my train to Lucknow. He told me to accompany him to one of his friends house and after spending some time there, he himself would come to back with me to help me in boarding illegible train. The man introduced himself as a police personnel and that is why I trusted him. After that, he brought me to Kolkata at about 2.30 P.M. by availing the ferry service from Howrah. After reaching Kolkata he hired an autorickshaw and took me to a place which was very crowded and where I saw something like rail tracks (later came to road as tram car). He then told me that I am taking you to my friend's house, but on the way, you don't walk beside me and keep some distance. While we were approaching a narrow lane, I saw some well-dressed girls waiting there. When I asked him about the place, he told me nothing to be worried. But, I could realize that the place was not safe. The man had taken me there with an aim either to sell me or for any bad intention. I started shouting. The girls who were there caught hold of the man. Thereafter, many other girls came there. Police arrived. Rescued me. The police, in front of those girls, questioned me. I told them everything, the man, while we were travelling by Auto, told his name as Haradhan Dutta. I have told everything before the police so that

the man gets punishment. After that police arrested that man (Haradhan Dutta) and left the place.”

The Investigating Authority on completion of the Investigation submitted charge-sheet against the appellant (accused) under Sections 363/366A of the Indian Penal Code, consequently the case was committed to the Court of Sessions by the ACMM, Calcutta. The learned Chief Judge, City Sessions Court, Calcutta, thereafter transferred the case to the learned Trial Court i.e., Additional District & Sessions Judge, F.T. Court No.II, Bichar Bhawan, Calcutta, for enquiry, trial and disposal.

The learned Trial Court on or about 04.04.2013 after perusal of the documents relied on by the prosecution and hearing the accused, was pleased to frame charge under Sections 363 and 366A of the Indian Penal Code. The contents of the charge was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied on 12 witnesses and 10 documents, which were marked as Exhibits. The accused, however, did not tender any defence witness or relied upon any document in support of its case. However, a plea was taken up regarding innocence at the stage of Section 313 of the Code of Criminal Procedure (which will be dealt with at the subsequent paragraphs).

PW1, victim, in her deposition before the Court stated that her parents are residing at Lucknow and she was staying with her grandmother, as such for the purpose of visiting her parents she went to Howrah Station. At Howrah Station she approached the ticket counter for

purchasing a ticket and on seeing a large gathering near the counter she decided to sit at the station, after sometime she felt hungry and went outside to purchase some food but she could not find her money which was tucked at the waist of her salwar kameez. Finding no other option she came back and sat at the Howrah Station and after sometime she observed a person (accused) took the sit beside her and asked her name and where she would be going. After knowing that she would be going to Lucknow the person stated that the train was at night and whether she had any food. The said person (accused) offered her food which she refused. The witness further stated that the accused was constantly disturbing her and as such she said that she would be informing the police authorities, when the accused represented that he himself was a police and in order to convince her he brought out a card from his pocket. As the accused was wearing police like uniform the witness believed him to be a police and came outside the station with him for food. The accused thereafter stated that the food available at the station was not good and asked her to go towards the Ferry Ghat (which is opposite to the Station). When the victim became afraid the accused assured her not to worry as he himself is a police and with the help of boat he took her at the other side of the river. After crossing the river the accused stated that he has some urgent work to do and asked her to accompany him. The victim/witness refused, however, the accused convinced her by representing that she should not worry about anything as he was a police. Thereafter, the accused boarded an auto-rickshaw and took her near a road where she found that many girls were wearing short dresses, smoking cigarettes and the accused took her to a room and

instructed her that if anyone asked her then the victim should represent that in order to find a job the accused had brought her there. The victim categorically stated that never had she requested the accused for any job but under the circumstances she was forced to follow the accused. When he was climbing the stairs she found an altercation was going on between the accused and another person and after following the said person she went to a room where she found a lady was eating guava who asked her name and why she had been in this place then she stated that the accused had brought her at this place at his friend's house. The victim narrated that the lady told her that the accused had brought her to this place for selling her. The victim described the whole incident and how the accused induced her for coming to this place, when the lady assured her that she was in safe hands and thereafter started beating the accused. The victim also stated in her deposition that she along with the accused was brought to an Office where her identity was clarified and thereafter taken to a police station where she was interrogated. The victim/witness identified the accused in Court by pointing her fingers and added that she had stated the facts to another Judge. Victim also identified her signature in the statement which she had narrated and was recorded by the Police Officer which was marked as Exbt.4 series.

PW2, Babli Bhattacharya, deposed before the Court that she was working with Durbar Mahila Samanay Committee. She stated that the Committee was working with the sex workers and her duty was to make arrangements for the treatment of sex workers and also to see that no girl

below the age of 18 years are engaged as sex worker. She also stated that they were in control of 13 houses in the area of Rabindra Sarani and for the said purpose they visited all those houses on a regular basis. According to her on 06.08.2012 at about 4.00 PM she saw the accused roaming with Rangila Khatoon and seeing this they caught hold of Rangila Khatoon along with accused in front of 38/A, Rabindra Sarani and on inquiry, the accused stated that she had brought PW1 as she was known to him. During such inquiry she stated that people assembled there and as such both the accused and PW1 were taken to a clinic and the accused stated over there that he cannot be detained as he was holding a card but such card was never produced before them. The accused also represented that he was a guard of a house, when he along with PW1 was taken to the Office situated at 12, Nilmony Mitra Lane wherefrom police was informed. The witness also stated that along with her one Sumita and Tarun were present during the incident. According to the witness PW1 was aged about 10/12 years and the accused disclosed his identity as Haradhan Babu. This witness also identified the accused in Court.

PW3, Sumita Das stated that she was working in Durbar Mahila Samanay Committee and on 06.08.2012 when she was on her duty she saw that the accused was about to enter a house being No. 38/A, Rabindra Sarani with PW1 who was about 13/14 years old. In inquiry PW1 revealed that the accused had brought her there on the plea of giving her job. Both of them were thereafter brought to the clinic when the accused threatened the members of the Committee by representing that he cannot be detained as he

was a Police Officer, however, PW1 reiterated that the accused brought her from Howrah Station on the plea of giving her job. According to the witness after thorough questioning no parity could be found between the statement of the accused and the victim and as such the matter was informed to one Mitra Di who informed the police over phone. Police, thereafter, arrived and interrogated the witness and other persons who narrated the incident and arrested the accused. The witness also stated that along with her one Tarun Mukherjee and Babli Bhattacharya witnessed the incident. The accused was identified by the witness in Court as Haradhan Babu.

PW4, Nurbanu, deposed that she is the grand-mother of the victim (PW1) who used to reside with her at Goalberia under P.S. – Bagnan. According to the witness, the parents of PW1 used to reside at Lucknow. She also stated that she has submitted documents to the Police Authorities and would be able to identify the same as her L.T.I. was affixed on it. The witness further narrated that in the month of August on Monday when Roza was going on PW1 was going to her parent's house at Lucknow, when a person representing himself as a Police Officer offered to escort her up to a train but she was taken to a different place. She categorically stated that PW1 was induced by the accused and the accused tried to sell her, however, she was rescued by local people who informed the Police Station. Additionally, she received information from Bagnan Police Station and thereafter went to Lalbazar and also the Home where the victim (PW1) has been kept.

PW5, Baby Agarwal, deposed that she knew PW1 who is aged about 12/13 years and on 06.08.2012 which was a Monday she went to Mandir and after returning back when she was sitting in front of her house she saw the accused along with PW1 entering in a room and immediately returning from there. The witness further stated that she somehow caught hold of the hand of PW1 and pulled the accused by back collar of the shirt. At that time the accused told her to leave him as he was a Police Officer when the witness called the Members of Durbar Mahila Samity situated at the opposite side of her house. The witness narrated whole of the incident to the Members of the Samity and handed over both the accused and the victim (PW1) to them.

PW6, Cornelius Gomes, is a seizure list witness, who signed in the seizure list of the school certificate and his signature was marked as Exb.1 by the Court.

PW7, Tarun Mukherjee, deposed that on 06.08.2012 when he had been for field work, he found a crowd in front of 438/A Rabindra Sarani where he also found that a minor girl and a gentleman were standing. In order to save the aforesaid two persons from public assault they were brought to the clinic. On inquiry the minor girl stated that she was at a platform at Howrah Station and she was brought by that man on the promise that she would be offered a job at somebody's house. The witness also stated that the accused on inquiry replied that he was employed at Howrah Police, when his Identity Card was demanded initially he refused but subsequently he showed the same to some of the office staff. The witness also stated that from the I.D. Card, it was reflected that the same

was issued by Rail Civil Defence. The accused also represented to each of them that whenever any minister came to inaugurate any foundation stone, he accompanied him. The name of the accused is Haradhan Dutta. The witness identified the accused in Court and further stated that Babli Bhattacharjee, Sunita Das and Arati Biswas were also present there. Additionally, the witness stated that the incident was informed to Mita Mukherjee who contacted the Police Authorities and also asked them to take the minor (PW1) and the accused to their office situated at Nilmoni Mitra Street. Thereafter, Police Officers from Lalbazar I.T. Section arrived and interrogated both of them and they were taken to the Police Station. The witness was asked to sign on the rescue memo and memo of arrest which were marked as Exbt.2 and Exbt.3 respectively. The witness identified his signature on the documents.

PW8, Nabanita Adhikary, stated that she was posted at Calcutta Medical College & Hospital as demonstrator. According to her, on 14.08.2012 Rangila Khatoon (PW1) was brought and identified by lady constable (314 of I.T Section D.D.), Mamata Ghosh and PW1 was examined in presence of Mrs. Soma Guha Roy. She further stated that "On examination, I found that multiple tear at 3 and 5 O'clock position and it was healed up on hymen. After examination I gave my detailed finding in my report. I also gave finding that she had no sex experience before clinically she was not pregnant. There was no injury in her body on private parts. Considering the physical finding, dental data and data of radiological examination together, I am of the opinion that victim was aged between 12-

14 years at the date of her radiological examination i.e. on 23.08.2012. This is the said report bearing my signature with official seal.” The report was marked as Exbt.5 and the witness also stated that the signature of the victim (PW1) as well as Soma Guha Roy and lady constable (314 of I.T. Section D.D), Mamata Ghosh is bearing on the said report.

PW9, Chandrababha Chakraborty, Metropolitan Magistrate 16th Court, Calcutta, deposed that on 18.08.2012 as per order of Ld. A.C.M.M., Calcutta, she recorded the statement of the victim (PW1) under Section 164 of the Code of Criminal Procedure in connection with C (D.D.), C/No.344 dated 06.08.2012 under Sections 366A/372/511/120B of I.P.C. She categorically deposed that the statement was recorded in her chamber after observance of legal formalities and before recording such statement the victim (PW1) was examined as to whether, she could give rational answer and being satisfied she proceeded to record the statement. After recording the statement she appended necessary certificate and obtained the signature of the victim (PW1) on each and every page. She also signed on every page of the statement. The witness identified the statement recorded by her in handwriting which bears her signature and same was marked as Exbt.6.

PW10, Mamata Ghosh, lady constable No. 314 attached to I.T. Section, D.D., Lalbazar. The witness stated that on 06.08.2012 a raiding team proceeded from her department wherein she was member and at about 4/4.30 p.m. as per direction of O.C all the members went to 438A, Bidhan Sarani/Rabindra Sarani. According to her, the premise was a brothel

situated at Sonagachi area where a girl aged about 13/14 years along with one person aged 50 years was surrounded by the local persons. The witness also stated that some Members of Durbar Mahila Samity were also present at the place. The O.C. asked the girl about her name, the girl stated her name to be Rangila Khatoon and on being asked how she arrived at this place, the girl stated she was waiting at Howrah Station to go to Lucknow to meet her parents and the aged person told her that the train to Lucknow will come at night and induced the girl by stating that he had a friend's house nearby and told her to accompany him. The witness also stated that instead of taking her to the friend's house, the accused brought her to Sonagachi. On inquiry the accused stated his name to be Haradhan Dutta. The witness identified the accused in court and stated that the girl was thereafter taken to a home.

PW11, Brojendra Nath Kayal, is a Plan Maker, attached to D.D., Lalbazar, who prepared rough sketch map which was marked as Exbt.7 and also the computerised final sketch map which was marked as Exbt.8.

Learned Advocate for the appellant challenged the charges which were framed under Sections 363/366A of the Indian Penal Code and submitted that none of the charges are applicable in respect of the evidence which were adduced by the prosecution. In order to substantiate his arguments, he has filed a written notes of argument wherein the points canvassed are.

- i) Taking away the minor from the lawful guardianship.
- ii) Inducement of the victim to accompany the petitioner to a brothel, recovery of the petitioner from a brothel.

- iii) Recovery of the petitioner from a brothel.
- iv) The appellant having the intent/reason to believe that the victim may be forced to indulge in sexual inter-course with other person against her will.

Apart from canvassing the aforesaid points, the Learned Advocate also submitted that the Learned Trial Court failed to take into account the defence version which was answered by the appellant in reference to question No. 9 of Section 313 of the Code of Criminal Procedure. Learned Advocate argued that the prosecution by way of evidence adopted to establish that the offence was initiated at Howrah Railway Station, the same continued till the appellant was nabbed at or around Rabindra Sarani. He emphasised that from the deposition of the victim girl (PW1) it is seen that she intended to board a train to Lucknow and learnt that the same is at night, so she was waiting at the platform when the appellant introduced himself to be a police and offered food to her. In view of such evidence on record, it has been submitted that there is hardly any material to show that there was any inducement/force upon the victim on the part of the appellant for taking her away from the lawful guardianship of her grandmother. To substantiate the second point, the appellant argued that the evidence of the prosecution witnesses taken as a whole do not establish any iota of material that the victim girl was taken to a brothel. The evidence which has been canvassed by the prosecution according to the appellant show that the victim was passing through a narrow lane where she saw well dressed girls standing there. As such, the place of occurrence raises a doubt

regarding the version of PW2, PW3 and PW7 to introduce themselves as Members of Durbar Mahila Samanay Committee or clinic attendant of the said organization. To address the third point, the appellant has questioned the place from where the victim was recovered. According to him, the prosecution has constantly changed the place of occurrence or varied the same from a road, a shop room, brothel and the Office of the particular NGO. It has also been submitted that non-examination of witnesses have prejudiced the appellant as the prosecution witnesses were bent upon to see the accused convicted as there is a lack of truth in their version and the evidence as narrated by different witnesses do not raise a reasonable suspicion for convicting the appellant. Learned Advocate further submits that the provisions of Sub-section 363 and Section 366A of the Indian Penal Code are hardly applicable in the background of the evidence which is appearing on record and the Learned Trial Court erroneously arrived at such conclusion without taking into account the defence which has been canvassed by the appellant in his examination under Section 313 of the Code of Criminal Procedure. Learned Advocate for the appellant also relied upon the following judgments: Iqbal -Vs. - State of Kerala, (2007) 12 SCC 724; Sannaia Subba Rao and Ors. -Vs. - State of Andhra Pradesh, (2008) 17 SCC 225; Veerasamy -Vs. - State Equivalent Citation : 2019 (2) MLJ (Crl)472; Golapi Bibi & Anr. -VS. - State of Assam, 2004 CriLJ 2209, (2004) 2 GLR 338.

Learned Advocate for the State opposed the contention on behalf of the appellant and submitted his written notes of argument. Learned

Advocate emphasised that there are ample materials on record which would be evident from the deposition of PW1 and PW4 that the victim was minor on the date of incident and she was allured/induced and diverted from her lawful guardianship. According to the Learned Advocate, the evidence of PW1, PW2, PW3, PW5 and PW7 and the statement of the victim under Section 164 of the Code of Criminal Procedure taken together would irresistibly reach to one conclusion that the appellant allured the victim, while introducing himself as a police personnel and on the garb of providing food/job, forced her to cross the river which is opposite to the Railway Station and with the aid of Auto-rickshaw took her to an area, whose introduction is evident from the statement of the victim. It is also evident in the evidence of these 5 witnesses that the appellant had taken her to a building and thereafter came down and was intercepted by the members of the said Durbar Mahila Samanay Committee. It has also been submitted that the evidence of the case must be taken as a whole and minor contradictions which has been emphasised by the appellant cannot be made the foundation of a case for arriving at its conclusion. The Learned Advocate also stated that the appellant has failed to show that there was any previous enmity between the victim, who is 15 years old and the appellant, for falsely implicating him in the instant case, neither any enmity has been shown in respect of the members of the Durbar Mahila Samanay Committee who intercepted the accused initially and followed him while he was entering the house at Rabindra Sarani and coming down thereafter. In order to substantiate his case, the Learned Advocate for the State relied upon the following judgments: State of Haryana -Vs. - Raja Ram, AIR 1973 SC 819;

Taru Das -Vs. - State of Tripura, 2008 Cri LJ 3143; Kailash Laxman Khambar -Vs. - State of Maharashtra, 2010 Cri LJ 3255; Sakina Bibi -Vs. - State of West Bengal, (2017) 4 Cal LT 517; Ramesh -Vs. - State of Maharashtra, AIR 1962 SC 1908; State of Rajasthan -Vs. - Smt. Kalki & Anr., (1981) 2 SCC 752 and State of Himachal Pradesh -Vs. - Lekh Raj & Anr., (2000) 1 SCC 247.

Before dealing with the rival contentions, this Court feels that the reply of the accused while he was examined under Section 313 of the Code of Criminal Procedure (which has been referred to earlier) in question No. 9 is required to be referred:

“9.Q. This witness further stated that when she became afraid he assured her that he was a police and after crossing the river, he took her by a auto on the pretext of doing some urgent work and stopped near a road where she found many girls wearing short dresses, smoking cigarettes and she felt very bad. What you have to say?”

***Answer:** I was going along the road and stopped to purchase cigarette and then some persons apprehended and detained me.”*

Such plea of the appellant was never taken up during the examination of any of the witnesses and this defence was first time introduced by the appellant in his examination under Section 313 of the Code of Criminal Procedure. As to whether such type of plea can be accepted by this Court or not would be dealt with subsequently.

An assessment of the prosecution witnesses would reveal that apart from the victim being PW1, Babli Bhattacharya (PW2), Sunita Das (PW3),

Baby Agarwal (PW5) and Tarun Mukherjee (PW7) are all witnesses who were present at the time when the accused was intercepted. The evidence of PW2, PW3 and PW5 reflect that the place where the accused along with PW1 was intercepted is a red light area. The spirit/tenor of evidence of all these witnesses unerringly lead to one conclusion that the accused and the PW1 were intercepted in the area and the accused being questioned could not provide any satisfactory answer rather he tried to establish himself as a police and by such representation attempted to hoodwink the witnesses who believed that the minor PW1 was brought in the area for an illegal purpose. It is sufficient to say that the deposition of PW1 is inspiring confidence, so far as the manner in which she has been brought in the area from the railway station at Howrah. Here it would be pertinent to deal with the argument advanced by the learned advocate for the appellant that there was no evidence that the minor was taken away from the lawful guardianship or there was no inducement of the victim to accompany the petitioner to a brothel. The foundation of such submission requires reference to the judgment of the Hon'ble Apex Court in **Thakorlal D. Vadgama -Vs.- State of Gujarat**, (1973) 2 SCC 413 : 1973 SCC (Cri) 835 at page 420 wherein it has been held that: *"10. The legal position with respect to an offence under Section 366 IPC is not in doubt, in State of Haryana v. Rajaram [(1973) 1 SCC 544 : 1973 SCC (Cri) 428] this Court considered the meaning and scope of Section 361 IPC it was said there:*

"The object of this section seems as much to protect the minor children from being seduced for improper purpose as to protect the rights and privileges of

guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words ‘takes or entices any minor ... out of the keeping of the lawful guardian of such minor’ in Section 361, are significant. The use of the word ‘keeping’ in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud, persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.”

1. In the case cited reference has been made to some English decisions in which it has been stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force of a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducements by previous promise or persuasion was held in some English decision to be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in Section 361 IPC is “whoever takes or entices any

minor". The word "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, "to cause to go", "to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. The two words "takes" and "entices", as used in Section 361 IPC are in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 IPC. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating or encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause

of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case. In the case before us, we cannot ignore the circumstances in which the appellant and Mohini came close to each other and the manner in which he is stated to have given her presents and tried to be intimate with her. The letters written by her to the appellant mainly in November 1966 (Exhibit P-20) and in December 1966 (Exhibit P-16) and also the letter written by Mohini's mother to the appellant in September 1966 (Exhibit P-27) furnish very important and essential background in which the culminating incident of January 16 and 17, 1967 has to be examined. These letters were taken into consideration by the High Court and in our opinion rightly. The suspicion entertained by Mohini's mother is also in our opinion, relevant in considering the truth of the story as narrated by the prosecutrix. In fact, this letter indicates how the mother of the girl belonging to a comparatively poorer family felt when confronted with a rich man's dishonourable behaviour towards her young, impressionable immature daughter; a man who also suggested to render financial help to her husband in time of need. These circumstances, among others, show that the main substratum of the story as revealed by Mohini in her evidence, is probable and trustworthy and it admits of no reasonable doubt as to its truthfulness. We have, therefore, no hesitation in holding that the conclusions of the two courts below with respect to the offence under Section 366 IPC are unexceptionable. There is absolutely no ground for interference under Article 136 of the Constitution.”

In view of the law laid down by the Hon'ble Apex Court the submission of the appellant so far as taking away from lawful guardianship or for the purpose of inducing the victim from accompanying the appellant cannot be sustained in the factual matrix of the present case. The evidence to that extent is overwhelming as there was an enticement/allurement along with a misrepresentation by the appellant of being a police personnel and thereby building a confidence in the mind of the minor. Some minor contradictions have been pointed out by the Learned Advocate for the appellant, but such minor contradictions are bound to appear where the victim is illiterate, ignorant and aged about 15 years. In *Boya Gaganna -Vs. - State of A.P.*, (1976) 1 SCC 584 it has been observed : *"Even in case of trained and educated persons, memory sometimes plays false and this would be much more so in case of ignorant and rustic women. It must also be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both are present at the scene of offence."*

It is well settled that minor variations should not be taken into consideration while assessing the reliability of testimony of a witness and the consistency of the prosecution witness must be taken as a whole.

Minor inconsistencies in the version cannot outweigh the consistent truth appearing from the version of the victim and to examine such evidence with microscopic approach would be an insult to justice-oriented judicial system. Thus, the charges of kidnapping in the instant case is to be

appreciated on the background of enticement, knowledge and capacity of the minor to understand the consequences, the place of occurrence from where the minor has been recovered along with accused as also the belated plea taken up by the accused.

Needless to state that the victim apart from being a minor was illiterate, below the poverty level (as the evidence reflects that she was working as a maid servant) and the evidence was recorded after a considerable period of time since the commission of the offence. So, the contention of the appellant that the complainant being the victim has consistently changed her stand is to be viewed with regard to her ability to present all the facts in a chronological manner, which in fact, is impossible if a true set of facts are to be placed before a Court of law. The veracity of the evidence of the victim, PW1 so far as the core allegations are concerned are consistent and minor contradictions in this case cannot suppress the ring of truth in her version.

The other aspect which requires consideration in this appeal is the belated plea taken up by appellant at the stage of Section 313 of the Code of Criminal Procedure. It is a settled proposition of law that the answers given by the accused in course of examination under Section 313 of the Code of Criminal Procedure can be used as an aid to lend credence to the evidence given by the prosecution. In this case, we find that throughout the cross-examination the truthfulness of the prosecution version was challenged to the limited extent of the veracity of the witnesses who had been deposing before the Court and it is only for the first time while being

examined under Section 313 of Cr.P.C. the accused took a plea "*I was going along the road and stopped to purchase cigarette and then some other persons apprehended and detained me.*" Such a plea at least fortifies the presence of the accused at the place of occurrence and the same supports the prosecution version of being present in the red light area as narrated by the prosecution witness.

On an analysis of the evidence of the prosecution witnesses and the examination under Section 313 of the Code of Criminal Procedure, this Court finds that the judgment and order of conviction and sentence so passed by the Ld. Trial Court do not suffer from any infirmity and as such no interference is called for.

The judgment and order of conviction and sentence dated 27.09.2016 and 28.09.2016 passed by the learned Additional District & Sessions Judge, F.T. Court No. II, Bichar Bhawan, Calcutta, in Sessions Trial No. 2(4) 2013 is hereby affirmed.

Accordingly, CRA 672 of 2016 is dismissed.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR forthwith to the Court below.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)