IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1306 OF 2003

SANNAIA SUBBA RAO & ORS. ..Appellants

Versus

STATE OF A.P. ..Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. This appeal arises out of the judgment and order dated 5.8.2003 passed by the learned Single Judge of the High Court of Andhra Pradesh at Hyderabad, convicting the three appellants under the provisions of Section 366A and Section 372 read with Section 511 Indian Penal Code, 1860 (for short 'IPC') and requiring each of them to undergo rigorous imprisonment for a period of 10 years and 5 years respectively on each count, which is to run concurrently. By the said order, the order dated 16.12.1996 passed by the learned Additional Assistant Sessions Judge, Guntur in SC No. 25 of 1995, acquitting the three accused was set aside.

2. Shri Subba Rao - appellant No. 1 and smt. Dhanalakshmi - appellant No. 2 are respectively the father and mother of Sankar - appellant No. 3. The mother of the prosecutrix filed a missing report on 29.07.1992 at Pattabhipuram Police Station. In the said report it was stated by her that her youngest daughter Prabhavathi-prosecutrix studying in Inter 1st Year in B.H. Girls Junior College went to the college on 25.7.1992 at 12.30 p.m. and thereafter did not return to her house and that the family made an enquiry amongst the relatives and friends both in the Guntur town and in the remaining villages but she could not be traced anywhere. It was further stated that her whereabouts are not known and that they have got doubt about her missing on three persons namely Subba Rao, his wife and his son Sankar, who are residents of old Pattabhipuram, Guntur. It was also stated that the missing girl was about 16 years of age and 5 feets 3 inches in height.

3. The aforesaid missing report was registered as Cr. No. 88/92. After receipt of the said report, the Police started investigation, but despite the said investigation they could not trace out the girl. It transpires from the prosecution case that the girl was traced out on 11.9.1992,

when she came to a bus shelter, which is opposite to the Check Post of Agricultural Market at Ravendrapadu.

4. Having found the girl weeping at the bus stand, PW-8 and PW-9 who are respectively working as watchman and supervisor at the Agricultural Market Committee, Ravendrapadu took her to the house of PW-8. The girl was kept in the house of PW-8 for two days during the course of which both PW-8 and PW-9 tried to find out the background and particulars of the girl and accordingly were able to trace out her house where they met the mother and informed her the whereabouts of her daughter. The mother, along-with the aunt and brother of the prosecutrix accompanied PW-8 and PW-9 to Ravendrapadu and thereafter they took back the girl to their house.

5. In terms of the aforesaid statement, the girl was taken back by the mother on 14.9.1992. She went to the police station on 19.9.1992 and on the same date she was sent to the Government General Hospital, Guntur for treatment as she was found to be weak both physically and mentally. Thereafter on 25.9.1992 she again went to the Police Station and presented a written report which was later on proved and exhibited in the trial as Ex. P-1. On the same day i.e. on 25.9.1992, Police examined the prosecutrix and recorded her

statement and thereafter also got the statement of PW-8 and PW-9 recorded. The Police thereafter examined many other witnesses and visited the house of the three appellants who were accused in the report submitted. Finally, a charge sheet was submitted by the Police against all the three accused persons who are appellants herein under Section 363, 366A, 368 and Section 372 read with 511 of the IPC.

6. During the course of the trial, 13 witnesses were examined, including the prosecutrix, her mother and the investigating officer who were examined as PW 1, PW 2 and PW 12 respectively. The case of the accused was of clear denial. After completion of the trial, arguments were heard by the Additional Asst. Sessions Judge who thereafter passed an order of acquittal against all the three accused persons holding that the whole prosecution story is doubtful and that any case against the accused has not been proved, and therefore, they are entitled to benefit of doubt.

7. Being aggrieved by the aforesaid order of acquittal, an appeal was filed in the High Court by the State against all the three accused persons. The learned Single Judge after hearing the appeal on

5.8.2003 passed a judgment and order setting aside the order of acquittal passed by the learned Trial Court, holding that the evidence on record does prove a case against the appellants/accused persons both under Section 366 A and 372 read with Section 511 IPC. On the question of sentence the learned Single Judge held that having regard to the nature of the offence and the fact that a minor girl being dragged forcibly into an auto rickshaw almost in the heart of the Guntur town that too in a broad day light and the purpose for which she was so kidnapped, warrant imposition of maximum sentence prescribed under the aforesaid provisions. Having held thus, all the three accused persons were convicted under Section 366A IPC and were sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay a fine of Rs. 5,000/- each and in default to undergo simple imprisonment for a period of two months and also under Section 372 read with Section 511 IPC and were sentenced to undergo rigorous imprisonment for a period of five years each and also to pay a fine of Rs. 2,500/- each and in default to undergo rigorous imprisonment for a period of 30 days.

8. Being aggrieved by the aforesaid judgment and order of conviction and sentence, the appellants filed the present appeal in this Court.

We heard the learned senior counsel appearing for the appellants and learned counsel appearing for the State and have also perused the records connected with the criminal trial and also the appeal. While admitting the appeal, the appellants were granted bail and therefore all the three appellants as on today are on bail.

9. Mr. M. Karpuga Vinayakam, the learned senior counsel appearing for the appellants forcefully contended, inter alia, that the learned Single Judge of the High Court of Andhra Pradesh has set aside the order of acquittal without discussing and appreciating the grounds on which the learned trial court passed the order of acquittal and also without giving any reason for setting aside the order of acquittal.

10. After placing strong reliance on various case laws, it was submitted before us that the High Court having not given reasons for not accepting the conclusions reached by the Trial Court while acquitting the accused persons committed a grave error of law in setting aside the order of acquittal and converting the same to an order of conviction. It was further submitted that there was no compelling reasons for converting the order of acquittal into order of conviction,

especially in view of the two different versions of the prosecution case during the course of trial.

11. The learned senior counsel has also taken us through the entire evidence on record and on the basis thereof, he submitted that as the prosecutrix herself has given two different versions of the case she cannot be said to be a trustworthy witness and therefore no conviction can be based on the basis of her statement and the High Court should not have interfered with the order of acquittal.

12. There could be no dispute with regard to the proposition of law, which is clearly laid down by this Court in various decisions. The power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction when it can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. In this regard we may refer to observations made by this Court in the case of **Hari Ram v. State of Rajasthan,** [(2000) 9 SCC 136] which are under:

> **4.** .....It is too well settled that the power of the High Court, while hearing an appeal against an acquittal, is as wide and comprehensive as in an appeal against a

conviction and it has full power to reappreciate the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would, sitting as a trial court, have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the learned trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice……
……..”

13. In the case of **Bhagwan Singh v. State of M.P., [**(2002) 4 SCC 85], the trail court acquitted the accused but the High Court convicted them. Negativing the contention of the appellants that the High Court could not have disturbed the findings facts of the Trial Court even if that view was not correct, this Court observed:

“7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of

administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but Judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not."

14. This Court in the case of **Chandrappa v. State of Karnataka** [(2007) 4 SCC 415], after referring to the catena of decisions has laid down following general principles with regard to powers of the appellate court while dealing with an appeal against an order of acquittal:

> **"42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal

against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

15. In that view of the aforesaid general principles, we have appreciated the entire evidence on record and also the judgment and order passed by the Trial Court and High Court to ascertain as to whether the order of acquittal passed by the learned Trial Court was justified and as to whether the High Court has set aside the order of acquittal without adhering to the settled proposition of law as discussed hereinabove.

16. The order of acquittal, as it appears from the order, was based on appreciation that PW-1, the prosecutrix made inconsistent versions from stage to stage and the evidence given by her in the trial was

totally different from the one set out in her report which was marked as Ex. P-1, therefore as there were contradictions in her versions, her evidence was not accepted as trustworthy.

17. The learned Trial Court also held that PW-1 gave wrong information that she was an orphan and that her parents have died. The learned Trial Court also pointed out certain contradictions in the evidence of PW-1 at different stages and on the basis thereof it was held that the nature of evidence led in by the prosecution being wholly doubtful, the prosecution story itself becomes doubtful and therefore it is a case of acquittal.

18. In the appeal filed against the order of acquittal, the High Court however, observed that PW-1 was a minor being aged about 17 years and that she was under lot of mental and physical strain and stress after she was kidnapped. The learned Single Judge after examining the evidence held that there was no reason to doubt the aforesaid evidence and since there was no enmity between her and the accused persons, the said evidence of PW-1 was fully justified to warrant the order of sentence in respect of both the offences.

19. As stated hereinbefore the prosecutrix was missing from her house from 25.7.1992 and the missing report came to be filed by PW-2, the mother of the prosecutrix on 29.7.1992. Although the said missing report was treated as the First Information Report but the police was unable to trace out the girl. She however was traced at the bus stand opposite to the Check Post of Agricultural Market Committee, Ravendrapadu. She was found weeping and was also giving incoherent statements but on the basis of the papers found with her, her family was traced and after tracing, her mother and brother came and took her away on 14.9.1992. She was, however, found to be under great mental strain and stress and therefore the police before whom she appeared and filed a written report sent her for treatment.

20. In the Missing Report, the mother of the prosecutrix named the three accused persons stating that they are suspects. In the written report submitted, which is exhibited as Ex. P-1, the prosecutrix has stated and has alleged as to how she was kidnapped while she was going to the college. In the said report it was stated by her that on 25.7.1992 on the way while going to the school at about 12.30 in the noon some unknown person came on a bicycle and told her that appellant No. 3

was calling her and threatened her to go urgently. It is alleged that out of fear she went to the house of Appellant No. 3 where she met Appellant No. 2 who told her that Sankar would be coming soon, she had also stated in the said report that Sankar asked her to bring either 200 or 150 rupees and on refusal threatened her to collect the said amount. She went to the house to which the milk is daily supplied by her parents to collect the money, when the Appellant No. 3 along with other persons was following her and was keeping a guard on her.

21. It was stated that on her request she received 200 rupees which she showed to Sankar, as she was asked to do so. It was alleged that immediately thereafter she was dragged into an auto rickshaw and she was made to forcibly sit in the middle of the back seat with a man with beard and dark complexion on one side and the stout female with fair complexion on the other side and the appellant No. 3 sat by the side of the auto driver. She stated that as soon as she got into the auto rickshaw, she was sedated by putting some drug in front of her nose. She stated that after she was free of sedation, she found that she was in a room. In the said room, she stated to have met Subba Rao, the appellant No. 1. She also alleged that she was beaten by

them for giving complaint against them by her parents. She stated in that report that she was given instructions as to how she should narrate the incidence to the police. She thereafter stated the manner in which she reached the bus stop near Ravendrapadu village and thereafter how she was recovered by her family members. In the said report however, there were no allegations of any rape on her by any of the accused persons.

22. The police thereafter having got some clues as to how the prosecutrix was kidnapped made investigation and examined many witnesses and also visited the house of the accused persons and thereafter finally submitted a charge-sheet. The charge-sheet was practically based on the similar line as what was stated by the prosecutrix in her written report submitted on 25.9.1992.

23. In the said charge-sheet, it was stated that on 19.9.1992 she was produced before the police and since she was found not fit to make any statement due to physical and mental strain and stress suffered by her, she was sent for medical examination to detect her mental condition and also to detect whether any sexual assault was committed.

24. The doctor, who examined her, gave an opinion that she was suffering from posttraumatic ice stress disorder and advised her to come for regular follow up. The other doctor who is a Gynecologist gave an opinion that there was no sexual intercourse.

25. In the said charge-sheet, it was stated by the police that the prosecutrix was a minor and was kidnapped against her will for the purpose of selling her to a brothel house to do prostitution and she was wrongfully confined for about 49 days and was subjected to mental harassment and torture. The charge-sheet was submitted under the provisions of Sections 366A, 363, 368 and 372 read with Section 511 IPC.

26. The learned Trial Judge, however, framed charge against all the three appellants herein under the provisions of Section 366A IPC and Section 372 read with Section 511 IPC. After framing of charges against the said accused persons, the trial court started the trial, during the course of which the prosecution examined 13 witnesses including the prosecutrix and her mother.

27. In order to prove her age, a School Leaving Certificate was produced according to which her date of birth was recorded as 12.6.1975. To prove that she was a minor, the prosecution also examined the headmaster of Pattabhipuram High School, Guntur where prosecutrix studied from Class VI to Class X from the year 1986 to 1991. He was examined as PW-13 and he has categorically stated that in the Admission Register, her date of birth was mentioned as 12.6.1975. He has also proved the certificate dated 17.3.1994 which showed her date of birth as 12.6.1975. He was cross-examined at length by the defense.

28. The prosecutrix was examined as PW-1 and in her deposition, she gave embellished and more aggravated form of deposition by alleging major offences against the accused persons by stating that during the said period she was sexually abused by both the appellant No. 1 and appellant No. 3.

29. We have carefully examined the said statement and allegations made by the prosecutrix against both the accused persons. She had stated in her deposition recorded on 14.5.1996 that the first accused i.e. father of appellant No. 3 sexually abused her for 5-6 times whereas

the appellant No. 3 who is the son also sexually abused her for 5-6 times. It was also stated by her that whenever both the accused were outside the room, they used to lock the room from outside and that she was provided meals by one lady who used to take her outside to attend the calls of nature and she also used to lock the room from inside whenever she used to stay with her.

30. She further deposed that during the period of confinement of 39 days and the intermittent period after the first and the third accused abused her sexually, the accused apprehended that her mother might give a complaint against them and they may be in trouble, because of which the appellant No. 1 brought some letters and papers and asked her to write as if she was writing it as love letters to appellant No. 3 so that they could be used by them in future to show and prove that she and the accused no. 3 loved each other and that she of her own accord finally eloped with accused No. 3.

31. She further stated in her deposition that the first accused and that bearded person brought her out on one night from that room and brought her to Railway Station where she was handed over to an old

man from where the old man brought her to Ravendrapadu Check Post and left her by telling her not to reveal anything.

32. She stated that M. Sambasiva Rao, PW-8 met her at the bus stop and asked her to sit in the room of the Check Post when he brought another person who was aged about 30 years and that she was afraid that they may commit sexual act on her and that is why she was weeping, but they took her to the house of PW-8 where her wife Aruna looked after her well. M. Sambasiva Rao, PW-8 left the house in the morning of Sunday and after enquiring about her residential address brought her mother and the elder brother to her house in the evening of Monday and she came to her house with the all these persons.

33. She stated that she was thereafter sent for medical examination, after completion of which she submitted her report which was exhibited as Ex. P-1. She also stated that she knew all the accused and that she had no enmity with any of them and that she had no relationship with them. She has also stated that she was kidnapped so as to sell her to prostitution home, which according to her was told by the first accused to her, but as they could not succeed in selling her, they

committed rape on her and spoiled her. She stated that at the time of incident her age was about 15 years.

34. She was cross-examined at length by the defense. PW-2 the mother of the prosecutrix was examined, she also supported the case of PW-1 particularly in respect of her kidnapping as she was informed by her daughter. She also stated that she had suspicion on all the three accused persons as she was told by one Vijaya Durga that first and third accused are used to kidnapping girls. She stated that she went to the house of first accused on the next day of missing of the girl who informed her that the prosecutrix did not come to their house and that she might have gone to Ananthapur, where a friend of her was residing. She also stated that on 29.7.1992, she gave a report to the Police which was exhibited as Ex. P-2.

35. From the aforesaid narration of the deposition of PW-1 and PW-2, it is established that PW-1 in her deposition in the trial has given a more embellished version of what has happened between the period of her kidnapping and the date when she was allowed to come back although at the initial stage i.e. immediately after she came back after confinement of about 39 days she did not state anything about sexual

intercourse or rape being committed on her by accused No. 1 and 3, but in her deposition subsequently she had reported sexual intercourse on her by accused Nos. 1 and 3 repeatedly on 5 or 6 occasions.

36. Although there are allegations that accused Nos. 1 and 3 wanted to sell her for prostitution, but neither there is any reference nor an incident which shows that an attempt was made to sell her in brothel house to do prostitution.

37. Having gone through the entire evidence on record, we are of the considered opinion that it cannot be said that any case under Section 366A or a case under section 372 read with Section 511 IPC was made out against any of the three accused persons. To that extent, in our considered opinion the Trial Court was justified.

38. So far as Section 366A is concerned, in such an offence what is required to be proved by the prosecution is that there is cogent and reliable evidence to prove and establish that a minor girl under the age of 18 years was induced to come from one place to the other with the intention that such girl may be, forced to have illicit intercourse

with another person. Therefore, in such an offence, the chief ingredient is that the girl is made to go from one place to other with the intention or knowledge that she may be forced to illicit intercourse. The evidence on record does not reveal any such intention. That the prosecutrix was subjected and forced to illicit intercourse came to be stated for the first time only during the trial which according to us is nothing but embellishment in order to see that the accused persons are made and are subjected to major punishments.

39. While appreciating the evidence, it will be our obligation, duty and responsibility to see that chaff are separated from the grains. The written report which was submitted immediately after her recovery according to us gave a clear and true picture as to what had happened. The deposition of her which although contained a part of the statement recorded in the written report came to include embellishments, trying to frame the three accused persons for the major offences.

40. We have to ignore that part of the evidence and when we do so, we find that no offence is proved and established as against accused-

appellant No. 1 and appellant No. 2 or there is even no allegation in the said written report which is exhibited as Ex. P-1 that any of them had in any way contributed in kidnapping her from her lawful guardian.

41. Learned senior counsel appearing on behalf of all the appellants also vehemently submitted that it cannot be said that the appellant was a minor for according to the school certificate itself her age would be more than 17 years and there could always be a difference of about 4-5 months in ascertaining age and in order to ascertain the age, she should have been examined by the medical expert, and therefore, the benefit should go to the accused persons so far as the age is concerned.

42. We are unable to accept the aforesaid contention for according to us, the prosecution has been able to establish the age of the prosecutrix as below 18 years, as they have been able to produce the school certificate which is proved by the headmaster of the school from whom the certificate was obtained. The aforesaid document being a legal document and having evidentiary value, has to be given due weightage as has been held by this Court in the case of state of

Chhattisgarh v. **Lekhram** [(2006) 5 SCC 736]. This court in the said case held as under:

> **"12.** A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty…….....
> **13.** ……It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."

Therefore, according to us, the onus on the prosecution to prove the age of the prosecutrix was effectively discharged by the prosecution.

43. In that view of the matter, we are of the concluded opinion that the prosecutrix was a minor on the date of the offence. We are, however, unable to persuade ourselves to believe that the accused persons are guilty of the offence under Section 366A IPC or under Section 372 read with Section 511 IPC. The prosecution has not been able to conclusively prove and establish by cogent evidence that the prosecutrix was kidnapped by accused persons with the intention of having sexual intercourse with them or with any other person. No such reliable or cogent evidence have been laid by the prosecution to

prove the charge. Similarly, there is no reliable and cogent evidence to prove and establish that she was kidnapped by the accused persons with the intention of selling her for prostitution. Therefore, the charge under Section 372 read with Section 511 IPC is also not proved against the accused persons.

44. Even having come to aforesaid conclusion, we have a further responsibility to see as to whether any other offence is made out.

45. The High Court was of the opinion that even though a case of rape was made out, but even then the Trial Court did not frame charge in that regard. But however the learned Single Judge did not remand the case back to the Trial Court for framing of charge under Section 376 IPC for punishing the accused persons under the aforesaid charge, as the same could have called for protracted trial. To that extent he may be justified but there are number of cases which justify the court to convert a case from major offence to minor offence, if a case for conviction under such minor offence is made out.

46. The charge-sheet was submitted also under Section 363 IPC by the Police but the Trial Court did not frame any charge under Section

363 IPC. Charge was framed for offences punishable under Section 366A and under Section 372 read with Section 511, IPC.

47. The Supreme Court has held in the case of **Willie (William) Slaney** v. **State of M.P.** [(1955) 2 SCR 1140] that any error or omission in framing charge could be rectified even at the appellate stage provided no prejudice is caused to the accused persons.

48. Already a case of kidnapping was alleged against the appellants in respect of which a charge under Section 366A was also framed and therefore the accused persons knew that they were being charged for taking away a minor out of the custody of the lawful guardian and they got full opportunity to defend themselves as against such an allegation.

49. The ingredients of Section 363 IPC involve an act of kidnapping of any person from the lawful guardianship. Kidnapping from the lawful guardianship is defined under Section 361 IPC, where it is stated that whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of

such minor or person of unsound mind, without the consent of such guardian, a case of kidnapping is made out.

50. Section 366A IPC also envisages an act of kidnapping of a minor girl out of the lawful guardianship with the intention of committing a sexual intercourse which is of a higher degree than that of an offence under Section 363 IPC.

51. Section 366A IPC is a major offence whereas Section 363 IPC is a minor offence compared to that of Section 366A IPC. There is therefore a difference in respect of the said two offences in respect of the punishment also. Section 366A IPC envisages a maximum punishment of ten years whereas Section 363 IPC envisages a punishment of seven years.

52. Under the provisions of Section 222 of the Code a provision is made that in a case where the accused is charged with a major offence and the said charge is not proved, the accused could be convicted of a minor offence if such a case is made out though he was not charged with the same.

53. In the case of **Tarkeshwar Sahu** v. **State of Bihar** [(2006) 8 SCC 560], this Court after relying upon the decision of this Court in **Lakhjit Singh** v. **State of Punjab** [1994 Supp. (1) SCC 173] and the case of **Shamnsaheb M. Multtani** v. **State of Karnataka** [(2001) 2 SCC 577] held that if the offence committed is clearly covered and have the ingredients of a minor offence, in that event, the Court is empowered to convict the person under minor offence by invoking the provisions of Section 222 of the Code.

54. In the case of **Willie (William) Slaney** (supra) it was stated by this Court that the object of the charge is not to introduce a provision that goes to the root of the jurisdiction but to enable the accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The said decision was a Constitution Bench decision of this Court which has stood the test of time and is being followed repeatedly by this Court. (See: **State of W.B. v. Laisal Haque** [(1989) 3 SCC 166)]; **Kammari Brahmaiah v. Public Prosecutor, High Court of A.P.** [(1999) 2 SCC 52]; **Dalbir Singh v. State of U.P.** [(2004) 5 SCC 334]).

55. So far appellant Nos. 1 and 2 are concerned, there is no evidence on record to prove and justify that they had any role to play in kidnapping of the prosecutrix, out of the lawful guardianship without their consent. However, we cannot record the same finding so far as appellant No. 3 is concerned, for there is concurrent statement of the prosecutrix on record to show that he was one among others who took part in keeping the prosecutrix out of the lawful guardianship without their consent, for they knew fully well as they were carrying her, that she was a minor and under the age of eighteen years but despite the fact they took her away out of the custody of the lawful guardian, without their consent to a place away from home and kept her confined there for 39 long days.

56. The accused No. 3 was in the auto rickshaw where she was put into and when the said auto rickshaw was driving her away she was sedated by a lady in the presence of appellant No. 3.

57. The aforesaid evidence is adduced by the prosecutrix herself and we see no reason why she should unnecessarily implicate appellant No. 3 when no case of enmity is made out in between the prosecutrix and the accused No. 3. She was kept confined for 39 long days after

kidnapping her from the lawful guardianship, and therefore, in our considered opinion the ingredients set out in Section 363 IPC are made out as against accused No. 3 at least.

58. Therefore, while acquitting all the accused persons from the charge of offence under Section 366A and 372 read with Section 511 IPC, we acquit the appellant Nos. 1 and 2 from all charges. Whereas, we hold that the appellant No. 3 is guilty of the offence under Section 363 IPC and accordingly we proceed to convict him accordingly.

59. Having held thus, we have to pass an order of sentence against the said accused-appellant No. 3. The incident is that of the year 1992 and 15 years have gone by, therefore, interest of justice would be sub-served if appellant No. 3 is sentenced to undergo rigorous imprisonment for a period of three years.

60. Bail bond submitted by Appellant Nos. 1 and 2 stand discharged whereas the bail bond of accused No. 3 stands cancelled and he shall immediately surrender so as to undergo the remaining punishment. We make it clear that the period of detention of the said accused will be set off from the period of punishment in accordance with law.

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J
[R.V. Raveendran]

.....J
[Dr. Mukundakam Sharma]

New Delhi
July 24, 2008