

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.771 OF 2016

SEETABEN LAGHDHIRBHAI

APPELLANT(S)

VERSUS

THE STATE OF GUJARAT

RESPONDENT(S)

O R D E R

1. Heard learned counsel appearing for the appellant and learned counsel appearing for the State.

2. The present appeal is by accused No.3. The case of the prosecution is that on 24th April, 2008, the accused no.1 abducted PW8 (victim) who was a minor studying in 8th standard from the lawful guardian of her mother. The allegation against accused no.1 is that he committed offence of rape. The allegation against the other accused is that they aided and abetted accused no.1 in committing the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short, 'the IPC').

2. Accused no.4 is the husband of the appellant. According to the version of PW8 (the victim of the offence), she was abducted by accused no.1 on 22nd April, 2008. The prosecution's case is that the appellant and her

husband (accused no.4) are staying in a house owned by accused no.4 with three children. The appellant and accused no.4 accommodated accused no.1 and the victim in the said house. The appellant secured a job to accused no.1 and PW8. According to PW8, though she requested the appellant to permit her to leave the house she did not allow her to leave the house. Her version in the examination-in-chief is that she had informed the appellant that accused no.1 had lured her and brought her to her house.

The Trial Court convicted accused no.1 for the offences punishable under Sections 363, 366 and 376 of the IPC. The appellant and her husband - Accused No.4 were convicted for the offence punishable under Section 212 read with Section 114 of the IPC. Both of them were also convicted for the offence punishable under Section 114 read with Section 376 of the IPC. The conviction of the appellant was confirmed by the High Court in appeal.

With the assistance of the learned counsel appearing for the appellant and learned counsel appearing for the State, we have carefully perused the evidence on record and in particular, the evidence of the victim of the offence. The first question is whether the appellant abetted offence punishable under Section 376 of the IPC and whether she is the abettor under Section 108 of the IPC. Section 107

which defines abetment reads thus:...

107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

It is pertinent to note that allegation against the appellant is of abetment of commission of an offence punishable under Section 376 and not Sections 363 and 366 of the IPC. If we consider the evidence of PW8 (victim), we find that she has not even made any allegation which will cover any of the clauses firstly, secondly and thirdly in Section 107 as far as offence punishable under Section 376 is concerned. Therefore, the conviction of the appellant for the offence punishable under Section 114 read with Section 376 of the IPC cannot be sustained.

Now we may come to the offence alleged under section

212 of the IPC. Section 212 of the IPC reads thus:

"212. Harboursing offender.— Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

["Offence" in this section includes any act committed at any place out of [India], which, if committed in [India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [India].]

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender."

Offence of harbouring an offender is made out when (a) an offence has been committed, (b) when the accused harbours or conceals a person whom he knows or has reason to believe to be the offender and (c) the harbouring or concealing must be with the intention of screening him from legal punishment. Therefore, the knowledge on the part of the person who has allegedly committed offence under Section 212 of the IPC of the offence committed by the person allegedly harboured is a necessary ingredient. Either there has to be a knowledge that the person harboured has committed a crime or that the accused had knowledge of certain facts on the basis of which he or she had a reason to believe that the person harboured appears to be an offender. Careful perusal of the examination-in-chief of the victim shows that the only allegation made by the victim against the appellant on this aspect is as under:

“...Thereafter I had talked to Sitaben to let me go to my house. So Sitaben was not allowing me to go anywhere outside the house. I had informed Sitaben that Sunil had lured and brought me.”

Even assuming that the appellant did not permit the victim to leave her house, no offence under Section 212 of the IPC is made out. There is only one sentence which

attempts to impute the appellant with the knowledge of the offence committed by the person allegedly harboured by her. The sentence is that the victim had informed the appellant that accused no.1 had lured her and brought her to the house of the appellant. However, in the cross-examination, the victim admitted that

"It is true that in my statement before the police I had not stated that, I had informed Sitaben that Sunil had lured and brought me.

It is not true that Sitaben was not allowing me to go out, this fact that I am stating is false. It is not true that I had asked Sunil to talk to my mother and father, but Sunil was not allowing me to talk with them this fact that I have stated is false. It is not true that after we had descended from the bus I have not seen the driver ever. It is not true that I am making false deposition."

(Underline Supplied)

Thus, the statement made by the victim in her examination-in-chief that she had informed the appellant about the illegal act of accused no.1 is an omission. This is a significant and relevant omission in the context of allegation of commission of offence under Section 212 of the IPC. Therefore, it amounts to contradiction which will be a major one. Therefore, the statement made by the victim that she had informed the appellant that accused no.1 has lured her and brought her to the house of the

appellant appears to be clearly an after thought. Therefore, even the offence punishable under Section 212 read with Section 114 of the IPC is not proved against the appellant.

Accordingly, the impugned judgments only insofar as the appellant is concerned are quashed and set aside and the appellant is acquitted of the offences alleged against her. The bail bonds furnished by the appellant stand cancelled.

We make it clear that we have made adjudication limited to the allegations made by the prosecution against the appellant and we have made no adjudication on the role attributed to the other co-accused who have been convicted by the courts.

The appeal is allowed on above terms.

Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JANUARY 16, 2025.

ITEM NO.106

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 771/2016

SEETABEN LAGHDHIRBHAI

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

(IA No. 9112/2016 - EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT, IA No. 9113/2016 - EXEMPTION FROM FILING
O.T.)

Date : 16-01-2025 This matter was called on for hearing
today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) :

Mr. Haresh Raichura, AOR
Mrs. Saroj Raichura, Adv.
Mr. Kalp Raichura, Adv.

For Respondent(s) : Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Mr. Ojaswa Pathak, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.
Pending application(s), if any, shall stand disposed
of.

KAVITA PAHUJA)
AR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[Signed order is placed on the file]