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**CASE ANALYSIS- Virendra Singh v. State of Himachal Pradesh<sup>1</sup>****BACKGROUND**

This case dealt with heinous crime of kidnapping. However, there are other facets that were covered in the case, keeping in mind the present generation. The earlier FIR was filed on the ground of kidnapping but the reference of section 376, Indian Penal Code and section 6 of POCSO, was also taken in order to decide the question of bail.

The case started with the coitus between a major boy and a minor girl, based on the romantic relationship they shared with each other. The minor girl started living with the boy and her parents found her. When asked to come back home, she voluntarily and fearlessly agreed to her love for the boy. Based on this situation, a FIR was filed by her parents under section 363, Indian Penal Code<sup>2</sup>, as a result of which this case proceedings took place. The bail petition was filed earlier under section 439 of CrPC before the Hon'ble High court of Shimla but was dismissed as withdrawn vide order, dated 17-12-2020. Result of which is this appeal.

This case involved wide constructive interpretation by the court based on the demand of the facts and circumstances which proved beneficial for meeting the ends of the justice.

Below mentioned is the series of events that occurred in this case-

DATE	SERIES OF EVENTS
September 2020	First coitus between appellant and victim.
31 <sup>st</sup> October 2020	Victim was allured by appellant to come home with him.
1 <sup>st</sup> November 2020	Victim went to appellant's house and Victim's father informed the police of Shillai about her missing daughter. FIR was

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<sup>2</sup>Herein referred to as 'IPC'.

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	registered.
3 <sup>rd</sup> November 2020	Medical examination of victim.
5 <sup>th</sup> November 2020	Appellant absconded from police custody
17 <sup>th</sup> December 2020	First bail petition dismissed as withdrawn.
20 <sup>th</sup> January 2021	Cr. MP(M) No. 77 of 2021 was reserved.
4 <sup>th</sup> February 2021	Judgement was passed

### FACTS

An unmarried boy, Virendra Singh, aged 24 years and a minor girl aged 16 years were in love and the girl went to his house where they had coitus.

The minor girl's father informed police on 1<sup>st</sup> Nov 2020, in Shillai, that his daughter is missing from his home and he discovered that his daughter had allured with Virendra Singh. They found the girl in the compound of the boy's house and asked her to come back home with them, but she refused, saying that she is in love with the boy and had voluntarily left her home. After that, when the victim visited the Counselor of Child Welfare Centre in Nahan, along with her parents, she told her mother that the boy allured her. As a result, a FIR was filed under section 363 of Indian Penal Code, on 3<sup>rd</sup> Nov 2020 based on which, the victim was taken for her medical examination in CHC, Shillai. After examination, swabs were taken from his body and later, she was produced before the learned Additional Chief Judicial Magistrate, Paonta Sahib, for recording her statement as per section 164, Criminal Procedure Code<sup>3</sup>.

The appellant was arrested on 3<sup>rd</sup> Nov 2020, and he was absconded on 5<sup>th</sup> Nov 2020 but was nabbed by the police. The investigations also revealed that the boy proposed minor girl for marriage when she stayed with him for 6-7 days in September 2020. The accused again met her on 31<sup>st</sup> October 2020, and allured the girl to come to his house and finally, on 1<sup>st</sup> Nov 2020, she went to the boy's house.

They boy was kept in custody for three months and then he filed for a bail petition in the High Court of Himachal Pradesh. This was his second bail petition. He also filed a bail petition earlier in the Hon'ble High Court which was registered as Cr. MP (M) No. 2126/2020 but this petition was dismissed by the order passed on 17/12/2020.

### ISSUES

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<sup>3</sup>Herein referred to as CrPC.

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- 1- Whether the above committed offence comes under the purview of kidnapping as per Section 361, IPC?
- 2- Whether the bail petition by the accused be accepted or dismissed?

### JUDGEMENT

- The court was of the opinion that the evidences leave no justified scope for keeping the appellant in imprisonment and hence, said that the appellant will be granted bail by the court but it was subjected to strict terms and conditions. These terms and conditions will be over and above and irrespective of the contents of the form of bail bonds as per chapter XXXIII of CrPC, 1973.
- The court granted the bail but furnished the appellant with a personal bond of Rs. 25,000 along with two sureties of similar amount, in order to satisfy the judicial magistrate and in case he is not available, to Ilaqa magistrate. The jurisprudence behind keeping these sureties was to secure the presence of the accused, and hence, the court said that before accepting the sureties, the concerned magistrate shall satisfy that, in case, the accused fails to appear in the court then it will be the job for the sureties to produce him.
- The court also gave an alternative to the appellant in which, the court said that the appellant 'may' furnish the said personal bond and fixed deposit of Rs. 25000 which will be made in favor of CJM, District Sirmaur, H.P.
- Again, certain flexibility was granted by the court on this alternative, such as- it is not mandatory that the fixed deposit shall be made from appellant's account or in one transaction, or it has to be in physical form; the deposit can be made from any bank in which the stake of the state is more than 50%, etc.

However, the alternative came with certain terms and conditions.

The next part of the judgement dealt with the deemed acceptances by the appellant in case he furnishes the personal bond, which includes-

- Acceptance to avoid any sort of delay in court proceedings and attend the trial proceedings on each day. Even in case of appeal, he accepts to appear before the Hon'ble High Court in terms of Section 437-A, CrPC, 1973.
- On the back page of personal bonds, the details of appellant, such as, permanent address, contact, e-mail, WhatsApp number, etc., shall be mentioned by the attesting officer. In case of any modifications, the appellant accepts to inform in the police station of the FIR to the concerned court, about such changes, in less than 30 days from such

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modification.

- Any sort of influence, pressure, browbeat, threat, promise or inducement, shall not be exercised by the appellant on the witness, police officials, or any other person having the knowledge of the facts of the case to refrain him from disclosing such facts. He accepts to not tamper with the evidences.
- Any sort of cooperation at all stages of investigation. If he fails to do so, the prosecution can seek 'cancellation of the bail'. However, the court granted him the protection from any inhuman treatment during the course of investigation and stated that he can be called between 8 A.M. to 5 P.M.
- The service of summons shall be through standard modes but, the court may serve or inform the accused about the service of summons through other mediums, such as, e-mail or WhatsApp, or any other instant messaging service.
  - The court shall issue summon at first instance, if the appellant fails to appear after that, then bailable warrants may be issued by the court.
  - If the appellant fails to appear even after that, then the court may issue non-bailable warrants in order to procure the presence of the appellant.
- The state may move an application for cancellation of bail if the appellant commits any offence with a punishment prescribed for more than seven years or violates any condition specified in this order, during the trial period.
- The court also direction the advocate and the officer in whose presence the appellant signs this order, that they shall explain all the conditions of this order to the appellant.
- In case the appellant feels that there is breach of any fundamental or human right due to the bail conditions imposed by the court, then he may file a reasoned application before the competent court.

### **REASONING-**

- The court took reference of section 376, IPC, which talks about the punishment for rape and section 6, Protection of Children from Sexual Offences Act, 2012<sup>4</sup>, which talks about punishment for aggravated penetrative sexual assault. Based on these two relevant sections, the court said that there is no restriction on grant of bail. In fact, the court went ahead saying that if the legislature would have wanted to bar the bail on such offences altogether, then they would have done it expressly, as done by them under section 37 of Narcotics drugs and Psychotropic substances Act, 1985 and section 438 of Scheduled

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<sup>4</sup> Herein referred to as POCSO

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castes and scheduled tribes (prevention of atrocities) Act, 1989.

- The court said that the legislature that drafted the law in such a way that when a girl is less than 18 years of age, her maturity, intelligence and information play no vital role, and she cannot consent. However, the court took notice of the fact that the appellant taking away the girl by alluring or by doing false promises is a prima facie offence, but it can't be ignored that the girl had voluntarily stayed with the appellant earlier as well for six days, and, she declared in front of her parents about her love for the appellant, and denied to leave his house.
- The court also reasoned the decision around an important point of how social settings have worked in this case. Since the appellant was 24 years old and the girl was 16 years of age, the social background acted as a catalyst for her, where usually, in Indian families, the father is elder than the mother.
- The court was of the opinion that sexual education plays a crucial role in cases like this but didn't comment on it in detail as it is the policy matter of the policymakers and therefore, they shall be the one commenting on it.
- Court referred to the case of Anversinh alias Kiransinh Fatesinh Zala v. State of Gujarat<sup>5</sup>, to establish the fact that it was not an offense of kidnapping involved in this case. The court said that in this case, the appellant and the victim had a consensual affair and that the victim voluntarily joined the appellant's company. However, it cannot be ignored that the consent of minor is not given due regards in the eyes of law, making the conviction of appellant legally valid.
- For understanding the quantum of sentence, the court referred to the case of Madhya Pradesh v. Surendra Singh<sup>6</sup>, where it was said that there cannot be any reduction of sentence until and unless all the relevant factors have been adjudicated upon. Hence, as per the facts of the present case, the court felt the need to revisit the sentence of the appellant, because-
  - There was no element of force, mens rea or use of any weapon. Since, mens rea plays a crucial role in determining a sentence of a crime.
  - The young age of the appellant during the crime, which was at the precipice of majority and this is a case of love affair where it can be treated with hope and not punitively.
  - The present of both parties is in 40s and have been settled in their lives, so relegating the

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<sup>5</sup> 2021 SCC Online SC 19

<sup>6</sup> [(2015) 1 SCC 222]

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appellant back to jail will not help in meeting the ends of justice.

- The criminal history of the appellant is clear and has no record, which shows that he has led a normal life which still persists.

Taking all these points into consideration, the court was of the opinion that the appellant and the girl were romantically involved and that no forcible sexual relationship has been maintained her. The girl surrendered herself to the appellant and therefore, the court said that the chances to not grant the bail and to keep the appellant in jail have been reduced, because, firstly, the girl left the home herself, she made a bold statement about her love for the appellant which is not an ordinary activity for a Hindu rural society, and hence, it is not a forced sexual relationship, and hence, the act of taking her away was not kidnapping.

As a result, the bail was granted to the appellant but with certain terms and conditions, as discussed above.

### ANALYSIS

The two main statutes discussed in this case are IPC and POCSO. IPC is a consolidating statute, whereas POCSO is a curative statute and a remedial statute. POCSO has cured the shortcomings that were evident in IPC. IPC confined its scope limited to females as victims of sexual offence, however, POCSO widened that scope and recognized that males can also be the victims of sexual violence, along with providing remedies for the offences prescribed under it. The court made a statement in the case that, if the legislatures has avoided considering maturity, intelligence and information aspect, then they shall not be considered and cannot change the ground for consent, highlighting the principle of 'casus omissus'. This principle enshrines that if anything is omitted from a statute then it shall be considered to be intentionally omitted. The court applied the literal rule of interpretation by not considering the maturity level but aimed at the language of the statute and believed that there was an inducement by the appellant to the prosecutrix as he asked her to reach a designated place.

Along with this literal interpretation of the statute, the court applied mischief rule of interpretation in order to cure the ill effect which literal interpretation would have been given. The court considered the fact that they were romantically involved in order to establish the fact that it wasn't a forcible sexual relationship, along with that, the court paid due regards to the fact that the prosecutrix voluntarily left her home earlier as well for the appellant and hence, it will not be right to put the appellant behind bars, granting bail to him. The application of mischief rule was important because it is important to note in such cases that due to increased use of technology, the children are understanding things at a faster pace and if a girl is

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romantically involved with the man and has done it as per her will, knowing the consequences, then blaming and punishing only the man is not justified. However, in this case, the court ignored the maturity aspect and also ignored the understanding of consequences by the man based on the availability of sex education, but the court well noticed the voluntary aspect of the girl's will. The court also took note of the fact that the man proposed her, in order to determine their romantic relationship based on which, no false intentions can be established.

It was important to look into other aspects in order to define the offence of kidnapping. Though, here also, the court interpreted the statute in a literal way by stating that the consent of minor will be of no use, but the court applied mischief rule along with other cases, which constitute the external aids of construction, to determine the offence of kidnapping.

According to me, it is important to look into other factors while determining any offence, and especially such heinous offences in order to meet the ends of justice. One shall not ignore the fact that how rapidly the generation is proceeding towards maturity and hence, they understand the consequences of their consent. In such cases, the entire life of the accused will be at stake if such factors like maturity, knowledge, information, intelligence, etc., are not considered.

Let's say, if in this case, only literal interpretation of the statute would have been made, would it be able to suffice the ends of justice? I don't think so. Because literal rule would have given no value to the victim's consent, but "voluntary and romantic affair" are two important aspects here. It was because of these factors that the "mens rea" couldn't be established and the sentence was revisited. The laws have been made long back and it is evident from such cases that the generation has changed and they know things at an early stage as compared to the previous generation.

### CONCLUSION

To conclude, I believe the decision of the court is right in context that they granted bail after considering the practical aspects of the case which I believe is important to be considered in such situations. Keeping present status in mind, it is evident that such provisions are being highly misused by the females, and hence, looking at these factors define the actual intention. mens rea is really important in determining any criminal offence, and therefore, in order to establish the true consent, these facts play a crucial role. One thing that can surely be done is to provide sex education in rural areas as well, in order to make people learn about their legal rights and their consequences, in order to avoid such cases.

I am of the opinion that the maturity level, information, and intelligence aspect shall be well-considered in these situations, to avoid the ill effects of the literal interpretation of the statute. In

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situations like this, the scope of judicial and constructive interpretation plays a vital role.



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