

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No. 2 of 2015

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The State of Bihar

Through District Magistrate, Begusarai.

.... Appellant

Versus

1. Amit Kumar.

2. Chandan Kumar.

Both Sons of Shivshankar Poddar

Both resident of Gram-Sadanandpur, P.S.-Balua, District-Begusarai.

.... Respondent

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Appearance :

For the Appellant : Mr. Shyameshwar Dayal, Advocate

For the Respondents :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 17-08-2015

The State of Bihar has preferred this appeal under
Section 378(1) (b) read with Section 378(3) of the Code of
Criminal Procedure, 1973 against the judgment, dated
11/09/2014, passed by learned Adhoc Additional Sessions
Judge-II, Begusarai, in Sessions Trial No. 300 of 2002,

whereby he has recorded acquittal of the respondents, who were charged for commission of the offences under Sections 363 and 366 A of the Indian Penal Code.

2. I.A. No. 452 of 2015 has been filed seeking condonation of delay in preferring the appeal.

3. Having considered the statements made in the application, we are satisfied that the appellant has been able to show sufficient cause for not preferring the appeal with the period of limitation prescribed. Delay, in preferring this appeal, is accordingly condoned. I.A. No. 452 of 2015 stands allowed.

4. For an occurrence, said to have been taken place on 18/11/1999 at 11 O'clock, a First Information Report was registered, on 24/11/1999, on the basis of a written report of the informant (P.W.-3), the uncle of a female person, making allegation of kidnapping the victim (P.W.-6) by the accused persons. From the First Information Report, which has been brought on the record by way of Annexure-1 to the present appeal petition, it would transpire that the informant alleged, in his written report, that he learnt from other persons, who were eye-witnesses to the occurrence, that



three persons, namely, Pramod Kumar Singh, Amit Kumar (respondent No. 1) and Chandan Kumar (respondent No. 2), had kidnapped the informant's niece, aged 16 years on 18/11/1999, when she was going to her College at 11.00 A.M. According to the informant, since he was out of the Village, he lodged the First Information Report on 24/11/1999, after he returned back on 21/11/1999, upon having been informed by the persons, who had witnessed the occurrence.

5. Upon completion of investigation, the police submitted chargesheet under Sections 363 and 366 A of the Indian Penal Code against the respondents, while showing the other co-accused, namely, Pramod Kumar Singh, as an absconder. After receipt of the chargesheet, learned Chief Judicial Magistrate, Begusarai, took cognizance of the offences under Sections 363 and 366 A of the Indian Penal Code and committed the case to the Court of Sessions on 29/05/2002 for the said offences under Sections 363 and 366 A of the Indian Penal Code. The respondents were, accordingly, charged for the offences under Sections 363 and 366 A of the Indian Penal Code. The trial commenced

against them, as the respondents pleaded not guilty.

6. In course of trial, the prosecution examined altogether six witnesses. The defence exhibited one document, as Exhibit-1.

7. Out of total six prosecution witnesses, examined in course of trial, apart from the girl, allegedly kidnapped, three claimed to be the eye-witnesses of the occurrence, which had taken place on 18/11/1999. These three prosecution witnesses are: - P.W.-1, Akhildeo Rai, P.W.-2, Doman Mochi and P.W.-5, Ram Badan Singh. P.W.-4, Kamini Rai, is the doctor, who had examined the girl, on 24/12/1999, alongwith other doctors in a Medical Board. P.W.-6, Rashmi Kumari @ Lalli Kumari, is the victim herself, whereas, P.W.-3, Gunnath Prasad Singh, is the informant of this case.

8. At the outset, it needs to be pointed out that it is not the case of the appellant that there is any misdescription or misreading of evidence by the learned Trial Judge in his judgment under appeal, of the evidence adduced in course of trial.

9. From the judgment under appeal, it is noticed that



P.W.-1, Akhildeo Rai, claimed that while he was coming to Begusarai from his Village, on the alleged date of occurrence on 18/11/1999, he saw the accused persons standing in front of a white car on the road and when he proceeded ahead of the car, he heard cries of a girl from inside the car and when he looked back, he saw that the three accused persons, including the respondents, were forcibly pushing the girl inside the car. He claims to have recognized the girl as niece of the informant (P.W.-3). He further deposed that he had proceeded towards the car, but it was driven speedily towards Assam road. According to him, when he returned back from Begusarai, he narrated about the incident to the family of the informant. P.W.-2, Doman Mochi (Ram), is also said to have seen the occurrence being committed, on 18/11/1999, at 11 O'clock, by the accused persons, who were found forcibly pushing the girl into the white coloured car. In course of cross-examination, he is said to have stated that he returned back to the Village in the evening. P.W.-5, Ram Badan Singh, a chargesheet witness, is also said to have seen the occurrence taking place on the said date and at the time and place of occurrence. P.W.-6,



Rashmi Kumari, the girl herself, deposed, in course of trial, that on the date of occurrence, i.e., 18/11/1999, when she was going to her College at about 11.00 A.M., the respondent no. 2, Chandan, dragged her inside the vehicle, while respondent no. 1, Amit, and the co-accused, Pramod, covered her mouth with a handkerchief, whereafter she became unconscious and when she regained her senses, she found herself in a train. She also said that the co-accused, Pramod, wanted to marry her forcibly and denied that she had voluntarily gone to Gaziabad.

10. Before we deal with the evidence of P.W.-4, the doctor, it would be apt to mention here that the victim girl was examined under Section 164 of the Code of Criminal Procedure, 1973 on 06/01/2000. Her statement, recorded under Section 164 of the Code of Criminal Procedure, 1973, has been brought on record by way of Annexure-2 to the present appeal petition, wherein her age has been assessed to be about 18 years and she had stated before the Magistrate that she was in love with the co-accused, Pramod Kumar, and she had gone to Gaziabad alone. She further stated that she was never kidnapped. In her deposition, at the trial,

however, she deposed that she had made incorrect statement under Section 164 of the Code of Criminal Procedure under coercion.

11. P.W.-4, Kamni Rai, the doctor, proved the findings of the Medical Board upon examination of the girl, held on 24/12/1999, which are as follows: -

“(i) No injury found on the body.

(ii) Axillary hairs normal.

(iii) Breast well developed.

(iv) Vaginal examination: - no seminal stains on pubic and thigh no injury on genital area. As per pathological opinion sperm not seen on the vaginal swab taken. As per radiological opinion age was between 21 to 23 years.

Final opinion: - patient has no evidence of rape but she is habituated to coitus. Report was in the writing of this P.W. and pathologist and radiologist and their signatures were identified by her and marked as ext. 2.”

12. P.W.-3, Gunnath Prasad Singh, the informant, is said to have stated, during the cross-examination, that he came to know about the occurrence from Akhildeo Rai, P.W.-1, after he returned to the Village on 21/11/1999. He admitted, during cross-examination, that in course of search, it was learnt that co-accused, Pramod, had taken the victim

girl to Delhi, whereafter the father of Pramod went to Delhi, alongwith whom the girl came back. He also admitted that Pramod was his neighbour.

13. On appreciation of the evidence adduced in course of trial, the learned trial Court came to a conclusion that the prosecution did not bring to light any reliable and dependable documentary evidence on record in order to establish that the girl was minor at the time of occurrence. Learned trial Court noticed that though as per the oral evidence of the prosecution witnesses, the girl was described to be under 18 years of age, the Medical Board assessed her age between 21 to 23 years and, therefore, gave the respondents benefit of doubt, on the issue of the age of the girl, there being no cogent and convincing material to establish that she was a minor. Though the alleged victim was student of a school, no proof of her age was produced from the school record. He held, therefore, that no case of kidnapping under Section 363 and 366 A of the Indian Penal Code was made out. Learned trial Court further concluded that there was no sufficient evidence to corroborate that the victim was forced or subjected to illicit intercourse with

another person, by the respondents.

14. Learned Public Prosecutor, appearing on behalf of the State of Bihar, assailing the judgment of the learned trial Court, of acquittal, dated 11/09/2014, has submitted that the learned trial Court, without assigning any reason, disbelieved the witnesses, who had seen the occurrence taking place. He has submitted that the judgment of the learned trial Court stands vitiated as learned trial Court has not considered, in correct prospective, ocular evidence and has recorded acquittal of the accused persons on misappropriation of evidence on record.

15. We have perused the impugned judgment of the learned trial Court, dated 11/09/2014, carefully and have given our anxious consideration to the submissions made on behalf of the appellant-State of Bihar. As has been indicated above, no ground has been taken by the appellant-State of Bihar that deposition of any witness in course of trial has wrongly been described in the impugned judgment. We have accordingly proceeded to consider the correctness of the findings of the learned trial Court. We have noticed that P.W.-1, Akhildeo Rai, P.W.-2, Doman Mochi (Ram) and



P.W.-5, Ram Badan Singh, in their deposition, claimed to have seen the occurrence taking place on 18/11/1999. According to them, they saw the victim girl being forcibly pushed into a car and heard her cries for help. They, however, did not inform anyone, immediately, thereafter nor did they inform the police. They claimed in their deposition that they recognized the girl, who was being kidnapped, and the persons, who were kidnapping her. Yet, there is no evidence on record to show their immediate reaction after the occurrence took place on 18/11/1999 or at the time, when the occurrence was taking place on 18/11/1999. From the evidence of the prosecution witnesses, it appears that the said eye-witnesses informed the uncle of the victim girl on 21/11/1999, whereafter on 24/11/1999, the First Information Report was lodged. The reaction and conduct of the eye-witnesses, in the given case, cannot be said to be normal human behaviour. Their evidence, in our considered view, are not trustworthy. Further, this is not in dispute that the victim girl gave her statement under Section 164 Code of Criminal Procedure on 06/01/2000, wherein she specifically stated that she was in love with one Pramod Kumar and she



had gone to Gaziabad, on her own volition, alone. Subsequently, at the trial, while being examined as P.W.-6, she retracted from the statement, which she had made under Section 164 of the Code of Criminal Procedure, on the ground that it was made under undue pressure and such statement, made by her, was incorrect. Nothing has been pointed out by the learned counsel for the appellant-State of Bihar that there was any material before the learned trial Court to suggest that the prosecution laid any evidence that P.W.-6 had made her statement, under Section 164 of the Code of Criminal Procedure, under any kind of threat or coercion. We are of the view that mere bald assertion that P.W.-6 was threatened or coerced, when she had made her statement under Section 164 of the Code of Criminal Procedure, cannot be accepted as true without any material further to substantiate such an assertion. It is trite that a statement recorded under Section 164 of the Code of Criminal Procedure cannot be used as substantive evidence, it can be used to support or challenge the evidence given in Court by the persons, who had made the statement under Section 164 of the Code of Criminal Procedure.



16. Keeping in mind the fact that the statement of the witnesses Nos.- P.W.-1, P.W.-2 and P.W.-5 cannot be said to be beyond suspicion, their conduct being contrary to normal human behaviour, coupled with the fact that the victim girl initially made her statement under Section 164 of the Code of Criminal Procedure and took a complete U-turn in course of trial, alleging coercion and threat as regards making of a statement under Section 164 of the Code of Criminal Procedure without any material to substantiate such threat or coercion, we do not find any compelling and substantial reason to interfere with the findings of the learned trial Court.

17. We do not find any clinching material brought to our notice by learned Public Prosecutor to convince us that the findings of the learned trial Court are perverse and/or irrational. We have kept in mind the fact that medical evidence also does not corroborate the prosecution's version that the victim girl was a minor on the date of occurrence or that she was subjected to any forcible sexual intercourse.

18. In our opinion, High Court has to be very circumspect in exercising option of admitting appeals

against an order of acquittal and unless some clinching and compelling material is brought to the notice of the Court, which would be sufficient to demonstrate that the view, taken by the learned trial Court, is not at all a reasonable view, this Court should decline to grant leave to appeal or admit appeal against an order of acquittal recorded by trial Court.

19. In the above view of the matter, we do not find any merit in this appeal. This appeal does not deserve to be admitted and is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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