

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.786 of 2013

Arising Out of PS.Case No. -293 Year- 2010 Thana -BIHPUR District- BHAGALPUR

1. Chandu Sah @ Chandan Sah @ Ambed Kumar Sah Son Of Manikant Sah
Resident Of Village- Hario, P.S.- Bihpur, District- Bhagalpur Appellant

Versus

1. The State Of Bihar Respondent

Appearance :

For the Appellant : M/S Sunil Kumar Singh & Rajiv Ranjan Singh, Advs.

For the Respondent : Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 09-01-2015

Gopal Prasad, J.

Heard the learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 366 of the Penal Code and sentenced to undergo rigorous imprisonment for five years with fine of Rs.5,000/- and in default of non-payment of fine to undergo simple imprisonment for three months.

3. The prosecution case, as alleged in the first information report by the informant, the mother of the victim, alleging therein that on 25.08.2010 in the mid night at 12, while she was sleeping along with her son, Deepak Kumar, and daughter, Preeti Kumari, Manikant Sah knocked the door to open, on which she opened the door, then, Chandu Sah, Shaligram Sah and Pintu Sah entered into the house armed with deadly weapon and pointed it at her ear and the ear of her daughter and took her daughter in their possession. The, further, case is that they demanded key and threatened to kill and the informant out of fear gave the key and, thereafter, they took away jewellery worth Rs.1,25,000/- and cash worth Rs.25,000/- and, thereafter, Chandu @ Chandan took the victim, Preeti Kumari, the daughter of the informant, in his

possession and went out. The, further, case is that Manikant Sah ordered her three sons to tie hand and mouth of informant, the mother of the victim, and, thereafter, they tied the mouth and hand of the informant as well as her son, Deepak Kumar. The, further, case is that the husband of the informant was not at the house and after the accused persons flee away, her son anyhow managed to untie his hand and then they made alarm (hulla) on which the neighbours came and she disclosed about the occurrence.

4. On written report of the informant, first information report was lodged on 26.08.2010. The police proceeded for investigation and after investigation submitted charge sheet for offence under Section 366A of the Penal Code against accused, chandan Kumar @ Chandu Sah, and observed with regard to other accused persons that their implication does not appear in the case, hence, submitted charge sheet keeping investigation pending and after submission of the charge sheet, cognizance taken and the case committed to the Court of session.

5. During the trial, twelve witnesses have been examined on behalf of the prosecution and one witness examined as Court witness. The defence though has not adduced any evidence, but, has approved certain documents, which are Exhibits A, B and C and the affidavit by Preeting Kumari. However, the trial Court, taking into consideration the evidence of the witnesses, convicted the appellant under Section 366 of the Penal Code, taking into consideration Exhibit 'A' where the girl has said that her age as nineteen years. The affidavit sworn at before the Executive Magistrate, Gurgaon, holding that the victim herself supported the prosecution case in her evidence as well as statement under Section 164 of the Criminal Procedure Code that she was

taken at the point of pistol.

6. The defence of the accused that no occurrence has alleged in the first information report or taken place rather the victim had willfully gone with the accused due to love affairs and the accused has falsely been implicated in the case with ulterior motive to save the son of the informant, being accused for an offence in connection with Bihpur P.S. Case No. 292 of 2010 in which there is allegation that mother of the appellant have been set on fire by the son of the informant in retaliation that the victim has been kidnapped by the appellant and fled away.

7. It has been argued on behalf of the defence, as per the evidence of P.W. 10, the investigating officer, in paragraph 5 that he got information from Chowkidar, which was recorded as Sanha no. 530 at 07.10 a.m. and has mentioned the same in paragraph 2 of the case diary and reached village Hariya and recorded the statement of Sheela Devi, wife of Manikant Sah, on the basis of which Bihpur P.S. Case No. 292 of 2010 was recorded and, then, he, again, proceeded to Hariya village at 12.30 p.m. and at the village he did not get any information about Bihpur P.S. Case No. 293 of 2010 and has stated that he received a written report with regard to Bihpur P.S. Case No. 293 of 2010. It has, further, been contended that no one has seen the victim fleeing away and, further, the victim went along with the appellant and remained in Delhi for about three months and also returned with the appellant and nowhere in way she has reported the matter rather has signed the affidavit before the Executive Magistrate at Gurgaon, hence, it shows that the victim was major and went with the consent with appellant.

8. The learned counsel for the State, however, contends

that the witnesses have supported the prosecution case which includes the victim, who in her statement in Court as well as in statement under Section 164 of the Criminal Procedure Code.

9. However, taking into consideration the evidence in the light of submissions through witnesses, P.Ws. 1, 2, 3 and 4 supported the prosecution case that there was a white Bolero Jeep and the accused persons brought the victim Preeti Kumari by dragging her from her house and taken away the victim. However, the occurrence alleged to have taken place at 12 in the mid night and the witnesses stated that they saw the occurrence that the accused persons dragging and taking away the victim, but, it is highly improbable that the witnesses in the night did not make alarm (hulla). However, the first information report has been lodged on the next day and there are two cases, the case and counter case. Exhibit 'B' is the case filed by the wife of Manikant Sah about burning and that case has been lodged earlier and the case of the defence that the victim went away along with the appellant and, then, in retaliation the prosecution party set on fire. However, P.Ws. 5, 6, 7 and 8 are only hear-say witnesses as they have learnt about the occurrence in morning. P.W. 9 is the informant. P.Ws. 10 and 11 are investigating officers and P.W. 12 is the Doctor who examined the victim and has opined that there is no evidence of recent sexual intercourse, as per pathological. Report and opined that the age of the victim appears below eighteen years, as per radiological report. However, taking into consideration the evidence of the victim that she has stated that she was taken by train to Delhi and was kept in a house having two rooms with wash room and she has stated that the maternal uncle of Chandu, Bharat Lal Sah, also came there and he took her

jewelleries at the point of pistol and then Bharat Lal Sah returned back and, thereafter, Chandu remained with the victim at Delhi. It has, further, been stated that she remained at Delhi for three months and, thereafter, the maternal uncle of Chandu informed them to come to Patna by train and from there they went to Kursela by bus where the police arrested the appellant.

10. However, with regard to this evidence that the victim was kidnapped and then taken to Delhi by train, there she remained with the appellant for about three months, further, the evidence, Exhibit 'A', the affidavit before the Executive Magistrate, Gurgaon, itself, indicate that she went out of her own will. More over, having regard to the facts and circumstances of the case that the first information report lodged with an allegation that the appellant along with other family members, father, brother, went in the house of the victim and kidnapped the victim snatching jewellerys, however, the police did not submit charge sheet and the prosecution witnesses have not supported this part of the prosecution story in the first information report. P.Ws. 3 and 4 though have supported the prosecution case that they saw the Bolero Jeep and also the daughter whom the accused persons brought dragging to the Jeep, but, they did not make any alarm (hulla) and only witness, who has supported the prosecution case is P.W. 2. however, the police has submitted the charge sheet only against the appellant and not against the other accused persons and, further, the fact that the victim went to Delhi and during the whole of the journey by train and remained in Delhi for about three months, did not make any alarm (hulla) and returned back with the appellant, who has been caught hold at Kursela, itself, indicates her consent, i.e., her being a consenting party. The trial Court has

convicted the appellant under Section 366 of the Penal Code holding the age of the victim as nineteen years.

11. Hence, taking into consideration the circumstances that the victim went along with the appellant by train to Delhi and remained there for three months. However, her evidence that she was administered biscuit by which she got unconscious is only a cooked up story and no such statement has been made in her statement under Section 164 of the Criminal Procedure Code before the Magistrate and she did not make any alarm (hulla), itself, indicates that she being a major aged nineteen years remained with the appellant with consent, hence, no offence under Section 366 of the Penal Code is made out.

12. The appeal is **allowed** and the appellant is acquitted of the charge. Since, the appellant is on bail, he is discharged from the liability of bail bond.

(Gopal Prasad, J)

The Patna High Court
The 9th day of January, 2015
N.A.F.R.,
SA/-

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