

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1051 of 2010

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Maniya Devi wife of Timla Chaudhary, Resident of Patipul, Digha, PS.Digha,
Distt-Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Animesh Kr. Mishra, Amicus Curiae

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 06-08-2015

This happens to be a jail appeal and on account thereof, at an earlier occasion, Sri Ranbir Singh, Advocate was appointed as an Amicus Curiae who failed to respond, hence, Sri Animesh Kr. Mishra, Advocate has been requested to defend the sole appellant, Maniya Devi as an Amicus Curiae, which he consented and defended.

2. Appellant, Maniya Devi has been found guilty for an offence punishable under Section 366 IPC and sentenced to undergo RI for five years along with fine appertaining to Rs. 1000/- in default thereof, to undergo RI for three months additionally vide judgment of conviction dated 27.03.2010 and sentence dated 29.03.2010 passed by Additional Sessions Judge-FTC-IV, Patna in Sessions Trial No.1142/2006.

3. Rajeshwar Sao (PW-4) had recorded his Fard-e-



beyan on 04.05.2006 disclosing therein that his daughter, Saroj Kumari aged about 16 years became traceless and on account thereof, on 02.05.2006 he had recorded Sanha. However, they continued to search and during course thereof, Ranjeet Kumar son of Bhuri Rai and Dheeraj, his son had informed that they had seen Saroj Kumari in company of Maniya Devi who happened to be tenant of Ram Bachan Ray and on account thereof, they had gone to that place, inquired from Maniya Devi who confessed her guilt and further disclosed that she had allowed the victim to slip in the company of an unknown person for the purpose of marriage. On account thereof, there was commotion attracting presence of police personnel as well as recording of the Fard-e-beyan.

4. On the basis of the aforesaid Fard-e-beyan, Digha PS Case No. 78/2006 under Section 366/34 IPC was instituted whereunder charge-sheet was also submitted after conclusion of the trial followed with taking of cognizance and as, the offence happens to be the triable by the court of sessions, accordingly, the case was committed and proceeded with trial and met with ultimate result, the subject matter of instant appeal.

5. The defence case, as is evident, from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C happens to be complete denial of occurrence as well as of false

implication.

6. During trial, altogether five PWs have been examined out of whom, PW-1, Dheeraj, PW-2, Mahesh Rai, PW-3, Ranjeet Kumar, PW-4, Rajeshwar Sao and PW-5, Md. Imam Ali. Side by side, the prosecution has also exhibited the documents as Ext-1, signature of informant, Ext-1/A, Fard-e-beyan, Ext-2, signature of PW-5 over formal FIR.

7. PW-4, the informant Rajeshwar Sao, as is evident from his Fard-e-beyan as well as from his evidence, more particularly, para-2 whereunder, he had specifically stated that he is not an eyewitness to the occurrence. The allegation with regard to having in company with victim of appellant is based upon the disclosure made by PWs-1 and 3.

8. PW-3 is Ranjeet Kumar who had stated that he had seen the alleged victim Saroj Kumari in the company of Maniya Devi, however, during course of his examination-in-chief itself, he failed to identify Maniya Devi in the dock and on account thereof, authenticity of his evidence has completely been nullified by his own conduct.

9. With regard to PW-1, Dheeraj, less said is better. Apart from the fact that on the alleged date of occurrence, he was in or around 10 years, a child and further from the Fard-e-beyan itself, it is apparent that victim had gone missing since before 02.05.2006 and for



that on 02.05.2006, Sanha was recorded, then in that event, had Dheeraj been an eyewitness, he would certainly have disclosed that he had seen the victim in the company of appellant, Maniya Devi. Keeping silence for three consecutive days creates doubt over reliability of his evidence, more particularly, in the background of presence of Maniya Devi to be the next door neighbour residing in the same house along with informant which the Investigating Officer PW-5 had found during course of inspection of Place of occurrence and the same is evident from para-2 as well as para-6 of his evidence.

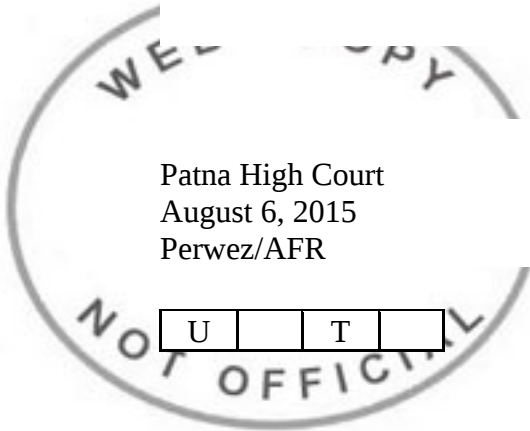
10. PW-2, Mahesh Ray was not present when query was being made and on account thereof, his status happens to be that of hearsay. Evidence of PW-5, the Investigating Officer is found crucial on that very score because of the fact that he had found presence of appellant being next door neighbour to the prosecution party.

11. Thus, considering the totality of the event, complicity of appellant is not found above board. On account thereof, appellant is found entitled for benefit of doubt. Accordingly, judgment of conviction and sentence recorded by the learned lower court is set aside. The appeal is allowed.

12. Since appellant is under custody, she is directed to be released forthwith if not wanted in any other case.

13. The first and the last pages of the instant appeal be

handed over the learned counsel, Sri Animesh Kr. Mishra, Amicus
Curiae for the needful.



(Aditya Kumar Trivedi, J)