

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.142 of 2015**

Arising Out of PS.Case No. -205 Year- 2010 Thana -ARARIA District- ARRARIA

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1. Raju Bhand @ Sirajuddin, son of Md. Israil, resident of Village - Rajokhar, P.S. - Araria, R.S. District - Araria.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Uday Bhanu Roy-Advocate
Mr. Baleshwar Kamat -Advocate

For the Respondent/s : Mr. Syed Ashfaq Ahmad-A.P.P.

For the Informant : Mr. Radha Mohan Singh--Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 31-01-2017

Heard learned counsel for the appellant as well as learned Additional Public Prosecutor.

2. Instant appeal has been preferred by sole appellant/ convict Raju Bhand @ Sirajuddin against the judgment of conviction dated 22.01.2015, order of sentence dated 23.01.2015 passed by the Adhoc Additional Sessions Judge-IV, Araria in Sessions Trial No.93 of 2013, Computer No.0001790/13, Trial No.166/14 whereby and whereunder he has been found guilty for an offence punishable under Section 363A of the I.P.C. and sentenced to undergo rigorous imprisonment for ten years as well as fined of Rs.5,000/-, under Section 377 of the I.P.C. sentenced to undergo rigorous imprisonment for 10 years and in likewise manner, fined of Rs.5,000/- and in default



thereof, to undergo rigorous imprisonment for one year additionally, under Section 24 of the Juvenile Justice (Care & Protection of Children) Act sentenced to undergo rigorous imprisonment of three years as well as fined of Rs.2,000/-, under Section 26 of the Juvenile Justice (Care & Protection of Children) Act, 2000 sentenced to undergo rigorous imprisonment of three year as well as fined of Rs.2,000/- in default thereof, to undergo simple imprisonment for six months, additionally with a further direction to run the sentences concurrently.

3. PW-3, Saket Kumar Srivastav filed written report on 10.05.2010 disclosing therein that he happens to be District Coordinator, D.D.W.S., Tip India Project, Araria. Suraj Kumar Gupta, Secretary, Madarsa Nari Utthan Kendra has informed him that a child aged about 10 years, who is disclosing his name as Rajna has met with him near his house weeping. On such information, he along with Subrat Kumar Sinha, Chairman, Village Development Samiti, Araria, Rajiv Kumar came to Araria on 08.05.2010 where they found a child at the house of Suraj Kumar Gupta. They enquired from the aforesaid child, who disclosed his name as Rajan, S/o Bhanu (Bhannu), mother's name Sunita, resident of village-Rahpura, District-Katni. He also disclosed that Raju Bhand had lifted him from his house about a month ago and then thereafter, forced him to beg in the name of 'ALLAH' and for that, he was regularly maltreated. Today, he has



brutally assaulted whereupon he ran from his house and hidden at a place as Raju was following him and during said course, he met with Suraj.

4. On the basis of the aforesaid written report, Araria P. S. Case No.205 of 2010 was registered under Section 363A of the I.P.C. whereupon investigation commenced and after concluding the same, chargesheet was submitted. During course of investigation, it is also apparent that alleged victim was examined under Section 164 of the Cr.P.C. as well as he was also medically examined. As the offences whereunder chargesheet was submitted, being exclusively triable by the Court of Sessions. Consequent thereupon, the case was committed and trial accordingly, commenced and concluded in a manner, the subject matter of instant appeal.

5. Defence, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is that of complete denial as well as that of false implication. In order to substantiate the same, defence had also examined one DW.

6. From the record, it transpires that altogether seven PWs have been examined, who are PW-1, A.S.I. Kanhaiya Singh, PW-2 Subrat Kumar Sinha, PW-3 Saket Kumar Srivastav (Informant), PW-4 Suraj Kumar Gupta, PW-5 Pankaj Kumar (I.O.), PW-6, Rajiv Kumar and PW-7 Sukesh Kumar (formal witness) and in likewise



manner, had also exhibited the document as Exhibit-1 series happen to be signatures of respective witnesses over written report, Exhibit-2 signature of informant over a petition filed before the learned Chief Judicial Magistrate, Exhibit-3 signature of witness over permission petition, Exhibit-4 signature of I.O. over chargesheet, Exhibit-5 signature of witness over written report and Exhibit-6 signature of Judicial Magistrate over statement recorded under Section 164 Cr.P.C. of the victim. Furthermore, from perusal of their evidences, it is crystal clear that they not at all claimed to be an eye witness to occurrence, rather reiterated the version, which they got from the victim Rajan.

7. From perusal of the L.C. Record, it is evident that victim has not been examined. There is no execution report available on the L.C. Record. From the record of the Chief Judicial Magistrate's Court, it is evident that on 11.05.2010, the informant had prayed before the learned Chief Judicial Magistrate as parents of victim, a minor, was not present on account thereof, he be permitted to accompany the victim to his place, which was allowed with a condition that after taking the victim to his home, the Court will be informed and in likewise manner, the Court is to be informed regularly at every fortnight regarding the affair relating to the victim. On the same day, that means to say, on 11.05.2010, there happens to be endorsement at the margin of the order sheet that informant had



received custody of minor, Rajan, the victim. Furthermore, it is evident from another order dated 09.06.2010 that informant had informed the Court that victim had already been taken to his home and then thereafter, there happens to be laches on his part whereunder he failed to say about the victim, regularly on due interval of fortnight. Even during course of his evidence as PW-3, the informant had not stated with regard to proper discharge of aforesaid obligation which the learned Chief Judicial Magistrate had entrusted upon him while allowing him to accompany the victim to his home. Furthermore, from his cross-examination Para-14, it is evident that his activity became suspicious on that very score, for better appreciation the same is quoted below in verbatim:-

“14. Bachcha Ke Mata-Pita Ke Location Ka Pata Nahi Chala Baad Me Humne Hi Bachcha Ko Ghar Pahunchaya Meri Sanstha Ke Log Bachcha Ko Pahunchane Gayee Thi.”

8. Victim is the only witness, who could have narrated regarding occurrence and so, learned counsel for the appellant is right in submitting that on account of non-examination of victim, the status of the remaining witnesses did not justify their status that of hearsay witness. Accordingly, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed.

9. On account of persisting lacunae on the L.C. Record,



for want of execution report as well as having the situation hedgy due to non-availability of proper evidence that victim was ever noticed on his home address, and further, having conclusive evidence that victim was ever taken to his home, requires fresh effort at the end of lower Court, and for that, the matter is remitted back to the learned lower Court to direct PW-3, the informant, to produce the victim for his examination on the date so fixed by the learned lower Court and will further endeavour to conclude the trial within six months, positively, in the background of considering the period of custody of the appellant. In case, victim is not produced at the end of PW-3, the informant, then in that event, the learned lower Court will be at liberty to take proper action in accordance with law apart from having sincere effort to procure attendance of the victim.

10. Office is directed to transmit the lower court record so that trial be culminated within the aforesaid stipulated period.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	03.02.2017
Transmission Date	03.02.2017

