

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.468 of 2015

Arising Out of PS.Case No. -387 Year- 2010 Thana -MADHEPURA District- MADHEPURA

=====

SANDEEP SADA SON OF PANKAJ SADA, RESIDENT OF VILLAGE-KHOPITI, POLICE STATION AND DISTRICT- MADHEPURA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

Appearance:

For the Appellant/s : Mr. Uday Chand Prasad, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 29-03-2017

Sole appellant Sandeep Sada has been found guilty for an offence punishable under Section 366A IPC and sentenced to undergo R.I. for four years, fined of Rs.1000/- and in default thereof, to undergo S.I. for three months, additionally, by the Second Additional Sessions Judge, Madhepura in Sessions Trial No.53A of 2011 vide judgment of conviction dated 23.06.2015 and order of sentence dated 09.07.2015..

2. On 14.09.2010, Vidya Nand Bhagat (PW.4) filed written report disclosing therein that his daughter Soni Kumari aged about 13 years was kidnapped by Shambhu Sada, Rajan Sada, Kari Sada and Sandeep Sada. It has also been alleged that Rs.25,500/- is also found missing which they had succeeded in taking away influencing her.

3. On the basis of the aforesaid written report, Madhepura P.S. Case No.387 of 2010 was registered whereupon investigation commenced and after concluding the same charge sheet was submitted against Shambhu Sada and Kari Sada keeping investigation pending against Sandeep and Rajan and on account thereof, their trial was separated and proceeded with under Sessions Trial No.53/2011.



However, after submission of supplementary charge sheet as well as commitment, appellant along with Rajan Sada (since acquitted) proceeded with under supplementary record bearing no.53A/2011, which ultimately met with the result, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial of the occurrence as well as false implication on account of village rivalry. To substantiate the same two DWs have been examined namely DW-1 Mithilesh Yadav and DW.2 Rajendra Yadav. However, no document has been exhibited.

5. In order to substantiated its case, prosecution had examined altogether ten PWs out of whom PW.1 is Sonu Kumar, brother of victim, PW.2 Mala Devi, mother of victim, PW.3 is Lalo Bhagat, cousin brother of the victim, PW.4 Vidyanand Bhagat, father of the victim, informant, PW.5 Dr. A.K. Verma, PW.6 Dr. Nisha, PW.7 Dr. B.K. Gupta, Member of the Medical Board who had examined the victim, PW.8 Brij Banshi Kumar Singh, Investigating Officer, PW.9 Soni Kumari, the victim and PW.10 Manshur Alam, Judicial Magistrate who had recorded statement of the victim under Section 164 Cr.P.C. Prosecution had also exhibited Ext.1 Series-Signature of respective doctors over medical report, Ext.2-Statement under Section 164 Cr.P.C.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellant that the finding recorded by the learned trial court happens to be cryptic, perverse in the background of the fact that the learned lower court had not considered the improbability visualizing in the prosecution case. Apart from this, it has also been submitted that from the written report itself it is apparent that victim was



very much inclined to Shambhu Bhagat and that happens to be reason behind that during course of elopement she had taken away Rs.25,500/- which the informant had kept at two different places. Consequent thereupon, it could be said that it was a case of consent and further, the alleged victim being at the verge of majority taken the step knowingly and intentionally and so, no case under Section 366A of the IPC is found attracted against the appellant.

7. Furthermore, the evidences having been adduced on behalf of prosecution also not been properly scrutinized in legal way in order to arrive at a reasonable conclusion and that being so, the judgment impugned did not justify its sustenance. That being so, the same is fit to be set aside. Apart from this, it has also been submitted that all the witnesses whoever been examined are all family members without presence of independent witness and in likewise manner, the Investigating Officer failed to visit the relevant place where the victim PW.9 had alleged her stay during the intervening period in order to searched out some objective finding over authenticity of the conduct of the victim in the background of the disclosure having made under written report supported by the informant even during evidence. As such, the judgment impugned suggest that the learned lower court overlooked the important salient features persisting on the record discrediting the prosecution version, whereupon fit to be set aside.

8. The learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that witness may lie but the circumstances not. From the evidence of the Investigating Officer, PW.8 it is apparent that victim was rescued by Arar O.P. and then, thereafter, on information he brought the victim. Furthermore, from



the medical examination, it is apparent that apart from being minor she was raped during her captive which alleged against Shambhu and further, from the evidence of victim PW.9 it is apparent that appellant had facilitated her kidnapping whereupon rightly been convicted. Consequent thereupon, appeal is fit to be dismissed.

9. In ***Kamlesh Prabhudas Tanna v. State of Gujarat*** reported in **(2013) 15 SCC 263** at para-9, it has been held:-

“9. At this juncture, we are obliged to state that though it may be difficult to state that the judgment suffers from sans reasons, yet it is not at all difficult to say that the reasons ascribed are really apology for reasons. If we allow ourselves to say so, one may ascribe certain reasons which seem to be reasons but the litmus test is to give seemly and condign reasons either to sustain or overturn the judgment. The filament of reasoning must logically flow from requisite analysis, but, unfortunately, the said exercise has not been carried out. In this context, we may refer with profit to the decision in *Padam Singh v. State of U.P.*⁸, wherein a two-Judge Bench, while dealing with the duty of the appellate court, has expressed thus: (SCC p. 625, para 2)

‘2. ... It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. *It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court.*”

(emphasis in original)



10. From the evidence on record, it is evident that save and except victim herself none had claimed to have seen the appellant along with others kidnapping the victim on the alleged date and time of occurrence when the victim had gone to meet nature's call. Furthermore, they have also deposed that whatever been stated by them happens to be on the basis of information having disclosed by the victim. PW.1 para-15, PW.2 para-1,5, PW.3 para-4.

11. PW.4 is the informant, father of victim. He had stated that on the alleged date and time of occurrence while he was sleeping at his Darwaja, he woke up on buzzing whereupon he saw Sandeep and Shambhu along with his daughter over motorcycle, who took her away. Rajan Sada, Kari Sada, Sandeep and Shambhu were. He had not chased. They have gone towards Bishunpur which he came later on. After seven days, girl was recovered. During cross-examination in para-10 he had stated that the house of appellant lies in front of his house. He (Appellant) runs flour mill while he (informant) runs flat rice mills. In para-14 he had stated that his daughter had taken away cash. Later on he came to know that she had also taken away ornaments. In para-15 his attention has been drawn towards written report. In para-16 he had stated that it was dark night. He had seen the girl from 3-4 links.

12. PW.9, is the victim who had stated that on the alleged date and time of occurrence she had gone to meet nature's call. Sandeep Sada, Shambhu, Kari came and took her forcibly to Bishunpur. She stated that all of them raped her at Bishunpur. From the Bishunpur she was taken to Arar where police had apprehended. She further corrected her deposition that Shambhu had only committed rape at Bishunpur. Others were also present. She had identified the accused. During course



of cross-examination she had admitted that under 164 Cr.P.C. statement she had named only one person. In para-9 he had further stated that father of Sandeep Sada happens to be Mukhiya. Furthermore, there happens to be contradiction at para-11,12. She had further stated that now she has been married.

13. From evidence of PW.5 doctor, it is evident that victim was estimated to be aged about 14-15 years. No cross-examination is found challenging the aforesaid finding save and except variance of two years. PW.6, Dr. Nisha had found the hymen torn and on account thereof, perceived the victim to have raped. However, no sign was found relating to recent intercourse. PW.7 is Dr. B.K. Gupta another member who simply exhibited his signature.

14. PW.10 is the Judicial Magistrate who had simply exhibited the statement of the victim having been recorded by him. However, his attention was not drawn towards the statement of the victim.

15. PW.8 is the Investigating Officer. He had deposed that after entrusted with the investigation by the Officer-in-charge after registration of the case, he recorded statement of the witnesses, inspected place of occurrence. Furthermore, he got information on 17.09.2010 regarding presence of victim at Arar O.P. whereupon she was brought to Madhepura P.S. Subsequently thereof, her statement under Section 164 was recorded. She was medically examined and then thereafter, handed over to her parents. He had further stated that first of all charge sheet was filed against Kari and Shambhu while supplementary charge sheet was filed against Sandeep and Rajan. During cross-examination at para-9 he had stated that there was allegation of going with money but he had not recovered the amount. In para-12 he had stated that none of the witness



had claim to have seen the accused taking away the victim. He had not seized any document regarding age of the victim.

16. Considering the totality of the event, it is apparent that though no cross-examination has been made on behalf of appellant over delay in launching written report, but the fact remains that same has been filed after two days without any explanation. Furthermore, from the evidence of PW.4 it is apparent that during course of evidence he exaggerated his initial version by way of claiming to be an eye witness is found improbable on account of his own disclosure that it was a dark night and further, he had seen the victim from such long distance. Apart from this, there happen to be no disclosure either at the end of victim or at the end of any of the witness that she ever raised alarm nor any of the witness had stated that they heard sound of motorcycle. Had there been it a case of kidnapping, then in that event, there was no occasion for the victim to slip with Rs.25,500/- which was kept at two distinct places by the informant himself as well as ornaments. Apart from this, from the evidence of PW.4, it is evident that not only cash rather ornaments were also taken away by the victim. Furthermore, even considering the evidence of PW.4, informant, had he claimed to be an eyewitness to occurrence, then, in that event, his natural conduct would have been to raise alarm, to the chase the kidnappers, and further to report the police at once. But no such activity has been taken at his end. Furthermore, when the evidence of PW.3 victim is taken, it also suffers from improbability as four persons have been alleged to have taken her away over motorcycle, which could not be. Furthermore, had she been kidnapped, there was no occasion for her to carry money and ornament while going to meet natures call, that too at dead of night. In likewise



manner, she had stated that she was assaulted during course of kidnapping, which happens to be exaggerated version whereupon her attention was drawn. Moreover, no hue and cry was raised at her end to save herself. Such activity suggests otherwise than the narration of the occurrence as flashed, so far complicity of appellant is concerned. Apart from this, the prosecution is completely, silent over mode of recovery of the victim nor the victim on her own disclosed the same. None happens to be witness on the score of recovery. In likewise manner, during course of investigation, the Investigating Officer failed to locate the place where victim was allegedly confined.

17. That being so, further appreciating the medical evidence which suggest the status of the victim at the verge of majority, did not justify the finding recorded by the learned lower court and on account thereof, is set aside. Consequent thereupon, appeal is allowed. Appellant is under custody, hence is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	15.03.2017
Uploading Date	29.03.2017
Transmission Date	29.03.2017

