

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.124 of 2015

Arising Out of PS.Case No. -75 Year- 2012 Thana -SAMASTIPUR GRP CASE District-SAMASTIPUR

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1. Rupesh Giri S/o Late Umesh Giri Resident of Mohalla Pethiya Gachhi, P.S. Samastipur Town, District Samastipur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 03-08-2017

The appeal has been called out. None appears on behalf of appellant. On account thereof, Mr. Arun Kumar Tripathi, has been requested to assist the court as an Amicus Curiae which he concedes.

2. Appellant, Rupesh Giri has been found guilty for an offence punishable under Section 354 IPC and sentenced to undergo RI for 2 years, to pay fine of Rs. 500/- in default thereof, to undergo SI for 1 month, under Section 363 IPC and sentenced to undergo RI for 7 years, to pay fine of Rs. 1000/- in default thereof to undergo SI for 3 months, under Section 366A IPC and sentenced to undergo RI for 10 years, to pay fine of Rs. 2000/- in default thereof to undergo SI for 6 months, under Section 304 (II) IPC, and sentenced to undergo RI for 10 years, to pay fine of Rs. 2000/- in default thereof to undergo SI for 6 months with a further direction to run the sentences



concurrently vide judgment of conviction dated 13.01.2015 and order of sentence dated 17.01.2015 passed by Adhoc Additional Sessions Judge-3rd Samastipur in Sessions Trial No. 119/2013.

3. PW-1, Rekha Devi recorded her Fard-e-beyan before police officials of GRP, Samastipur on 05.11.2012 at 2.00 AM at emergency ward, Railway Hospital, Samastipur disclosing therein that on 03.11.2012, she along with her daughter Nitu Kumari, Nanad, Sita Devi, Villagers, Jairam Kamti, Samtolia Devi and Mamta Devi had gone to Simaria for taking holy dip in the river, Ganga. After taking holy bath on 04.11.2012, all of them came to Barauni Junction awaiting arrival of relevant train to their destination. At about 9.00 PM, Katihar-Darbhanga train came. They boarded in the 4th bogie from the bogie of Guard. When the train came at Dalsingsarai, some of the passengers got down whereupon they had taken berth and slept, All of a sudden, one of the passengers raised alarm that whose girl is being kidnapped whereupon they awaken and saw one person carrying her daughter. They wanted to catch hold of but, the aforesaid miscreant jumped out from the running train carrying her daughter. They began to raise hue and cry. They also tried to stop the train, till then it halted at a station known as Nazirganj. All of them along with some of the passengers of that bogie got down came to the place of station master, narrated the incident who informed the GRP and after



arrival search was carried out and during course thereof, near about outer signal of Nazirganj, both of them were traced out being in injured condition. Her daughter was unconscious while miscreant was conscious who, on query disclosed his identity as Rupesh Giri son of Umesh Giri of village- Pethiya Gachhi, P.S. Samastipur Town, District Samastipur.

4. Initially, Rail PS Case No. 75/2012 was registered under Sections 363, 354, 307 IPC but on account of death of the victim, Section 302 IPC was also added. After submission of charge-sheet, cognizance was taken whereupon, trial before the court of sessions proceeded, concluded 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 CrPC is of complete denial. Furthermore, it has also been pleaded that appellant was standing over the gate and during course thereof, unfortunately, he had fallen down from the running train. It was bad luck, for that victim also fallen down from the bogie on account of darkness, whereupon he has been implicated out of misconception.

6. In order to substantiate its case, prosecution had examined altogether 12 PWs out of whom PW-1, Rekha Devi, PW-2, Sita Devi, PW-3, Samtolia Devi, PW-4, Jairam Kamti, PW-5, Binod



Kumar Verma, PW-6, Allauddin, PW-7, Ramtapeshwar Verma, PW-8, Mukesh Kumar, PW-9, Dr. Amrendra Kr Singh, PW-10, Dhananjay Kumar Singh, PW-11, Dharmendra Kr. Ray and PW-12, Dr. Prakash Kumar. Side by side had also exhibited Ext-1, Fard-e-beyan, Ext-2, injury report, Ext-3, Sanha no. 139/2012, Ext-4 signature of PW-10 over Fard-e-beyan, Ext-4/1, endorsement over Fard-e-beyan, Ext-5, inquest report, Ext-6, Postmortem report. While neither any DW nor any kind of document has been exhibited on behalf of defence.

7. Learned Amicus Curiae while challenging the judgment of conviction and sentence has submitted that the finding recorded by the learned lower court is not at all based upon sound principle of law, hence is fit to be set aside. In order to buttress such plea, it has been submitted that from the prosecution evidence, it is apparent that after departure of the train from Dalsingsarai, it halted at station, Nazirganj. So, the appellant's presence inside the bogie should have been before Dalsingsarai or at Dalsingsarai. As the prosecution party themselves admitted that after departure of train from Dalsingsarai they slept over the berth and lifting of girl and jumping from the running train by the appellant before arrival of next station is not at all inspiring confidence in the background of the fact that, in that event, the member of the prosecution party could have been under deep slumber and so, there was no occasion for one Md.



Allauddin, PW-6 to raise alarm. Apart from this, It has also been submitted that from the evidence of PW-6, it is evident that on his own he had not perceived such kind of activity at the hands of the appellant rather as the victim had raised alarm, so he apprehended some sort of fault whereupon, he also raised alarm. The victim was along with prosecution party and so, the prosecution party should have awoken hearing the alarm of the victim but they have not. So the story as propounded by the prosecution that the victim was taken under grip by the appellant under ulterior motive and then, jumped from a running train is nothing but misnomer. It has also been submitted that, on the other hand, the plea of defence having advanced on behalf of the appellant looks more probable and so, appellant should have been given benefit of doubt. Apart from this, it has also been submitted that the identification of the appellant in the facts and circumstances of the case is found doubtful as, none of the passengers including prosecution party had stated that light was inside the compartment and so, they have had occasion to see the appellant. In the aforesaid facts and circumstances of the case, it has been submitted that the conviction and sentence recorded by the learned lower court did not justify whereupon should be set aside.

8. Learned APP, while opposing the submission made on behalf of learned Amicus Curiae, has submitted that on superficial



ground, evidences would not be discarded. Evidence in its entirety is to be seen and during course thereof, the Court has to exercise in such a manner that court be able to pick up grain from the chaff. If those part of evidence is found sufficient to record conviction, is found legally permissible. As is evident, the evidence whatsoever been adduced on behalf of prosecution is found creditworthy having no scope of false implication, in absence of any sort of grievance. Apart from this, the witnesses are consistent as well as reliable over all aspect including manner of occurrence as well as proper identification of the appellant/accused. That being so, the learned lower court rightly convicted and sentenced the appellant/convict and as such, did not attract interference.

9. PW-9 is Dr. Amrendra Kr Singh who had examined the victim Nitu Kumari on 05.11.2012 at 1.35 A.M.. He had found her in semi conscious position. There was abrasion over her waist. No other external injury was found but perceiving condition of the patient who might have been sustained severe internal injury, though initiative was taken but for better treatment, she was referred to Sadar Hospital, Samastipur whereupon GRP personnel took her to Sadar Hospital. He had exhibited injury report as Ext-2. Subsequently thereof, the deceased while being admitted at the Sadar Hospital, Samastipur died whereupon, postmortem was conducted over her



dead body on 05.11.2012 at about 12.25 by PW-11 Dr. Prakash Kumar hours and found the following ante-mortem injuries:-

Externally:- (i) Bruise and haematoma sized 5" x 1" over right thigh and lower abdomen.

(ii) Swelling and bruise over lumbar vertebra.

Internal on dissection:-

- 1) Muscle haematoma and fracture of right side of the neck of femur.
- 2) Rupture of intestine and adjacent organs. Part of ovary and uterus, and blood present in abdominal cavity.
- 3) Muscle haematoma over lumbar region. There was no evidence of rape. Time elapsed since death 36 hour.

10. In the opinion of the doctor death has occurred on account of shock and hemorrhage due to ante-mortem injuries caused by hard and blunt substance. The doctor had further justified the illustration suggested at the end of the prosecution that if a person jumps out of a running train along with victim then in that event, such kind of injuries could be found over the victim and exhibited the postmortem report as Ext-6.

11. During cross-examination at para-14, he had admitted that no external injury was found having bleeding but, there was profuse bleeding internally. Therefore, from the aforesaid evidence it is evident that the deceased had sustained injuries and for getting specialized treatment she was referred to Samastipur Sadar Hospital where she succumbed. So death has been properly substantiated.



12. PW-8 is the Satiation Master of the Nazirganj Station. He had stated that on 04.11.2012, he was posted at Nazirganj as Station Master. He had stated that on that day his duty hour was from 1600 hours to 2400 hours. At about 22:28 hours, Train No. 55535 passenger train (Katihar-Darbhangra) came. After stoppage of the train, so many females as well as males got down from a bogie and disclosed that one person has jumped from the running train carrying a girl aged about 13-14 years just before and so, necessary steps be taken. Accordingly, he informed his superiors as well as the GRP through station master, Dalsingsarai. Then thereafter, after persuading passengers to keep patience, the train was allowed to proceed. Police came and then, with the assistance of the villagers gone in search and found the girl as well as miscreant in injured condition near about home signal of Nazirganj Station. He had already incorporated in his book regarding cause of delay of the train. The passengers had also disclosed that the aforesaid incident had occurred while they were returning from Simaria after "Ganga Asnan". During cross-examination, it is evident that he was deputed there by the Traffic Inspector. In para-10, he had disclosed that he had not gone to the place of occurrence. In para-11, he had stated that he had not taken proper identity from the passengers. He had further stated in para-13 that there happens to be no outpost of RPF at Nazirganj Station.



13. PW-10 is Dhananjay Kumar, Investigating Officer who had deposed that on 04.11.2012 at about 22.40 hours he was informed that one miscreant jumped out from a running train near about Nazirganj Station carrying a girl whereupon, Sanha No. 139/2012 was registered (exhibited) and then, proceeded from GRP out post, Samastipur. He rushed at Nazirganj, done the formalities, recorded the Fard-e-beyan of Rekha Kumari, took the statement of witnesses, inspected the place of occurrence which happens to be the running train as well as the place near about outer signal of Nazirganj Station where girl as well as miscreant were found in injured condition, took the girl to Railway Hospital and then Sadar Hospital, Samastipur where she died. Inquest was prepared, sent the dead body for postmortem, received postmortem report. On 06.11.2012, accused was discharged from the hospital whereupon, was taken into custody who, during course of interrogation, made inculpatory extra-judicial confessional statement. Subsequently, was sent to judicial custody. Then thereafter submitted charge-sheet after concluding the investigation. During cross-examination, he had admitted that he had not gone to the native place of the deceased. In para-14, he had stated that as per his direction, one of the constables had recorded Fard-e-beyan of informant in a way as stated by the informant. In para-16, he had further stated that he had not seized blood stain from the place of



occurrence or blood stained clothe of the deceased.

14. PW-11, a police constable had come to say that as directed by Dhananjay Kumar, Investigating Officer, he had recorded the Fard-e-beyan of informant, Rekha Devi.

15. Now coming to the oral evidence, PWs-5 and 7 are not relevant on the fact as they were not the members of pilgrims along with others, rather, PW-7 happens to be the father of the deceased and on being informed he had gone to the place of PW-5 to accompany whereupon they both came and found the deceased dead. Subsequently, they gathered information from the witnesses including Allauddin and so are hearsay on that very score.

16. Now the evidence of PWs, 1, 2, 3, 4 along with evidence of PW-6 has to be seen whether the same substantiated the allegation against the appellant or not. PW-6 had stated that on the alleged date and time of occurrence, he was returning to his home by Katihar- Darbhana passenger. He boarded the train at Dalsingsarai at about 10.00 PM. While he was sitting inside the bogie, he found one person who was looking the passengers of the compartment. Other passengers either had slept over berth or even being seated, were taking nap. Just after five minutes, the boy lifted the girl whereupon, the girl raised alarm. He also raised alarm that a girl is being kidnapped till then, the miscreant jumped out of train along with the



girl. He tried to pull the chain meanwhile, the train reached at Station which was Nazirganj. All of them got down, informed the station master who accordingly, informed the concerned, police official who came and then, on search the girl and the miscreant were found in an injured condition near outer signal of Nazirganj. The girl was badly injured and was unconscious. The miscreant was also injured but was in sense. On query, the accused had disclosed his identity as Umesh Giri. He identified the accused. Police along with injured and her mother, other family members, villagers along with he himself came to Samastipur where victim was admitted in the railway hospital Samastipur. Accused was also admitted. Thereafter, he gone to his place. His statement was recorded by the police. During cross-examination, he had stated that he neither knew the accused nor the prosecution party. At para-8, he stated that he had gone to the place of his elder sister of his wife. In para-9, he had further stated that he is not remembering the bogie number, seat number. In para-10 he had stated that bogie was lighten. From there, the place where he was, as well as other passengers were visible to him. In para-11, he had stated that first of all, he perceived that the man might have been connected with them but, as the girl raised alarm then, he understood the situation whereupon, he had raised alarm. The miscreant jumped out of running train having girl in his grip. This occurrence took place



after Dalsingsarai Station. Then thereafter, the train halted at Nazirganj Station. In para-12, he had stated that he did not get down from the train at Nazirganj at his own but at the request of prosecution party, he got down. They remained there for 1 and ½ hours. Subsequently thereof, they departed therefrom through another train.

17. From the evidence of PWs-1, 2, 3 and 4 it is evident that they are consistent over the version whatever been at the end of PW-6, Md. Allauddin so far manner of occurrence is concerned. They only added regarding their status as pilgrims up to Simaria Ghat and after taking holy bath in river, Ganges they were returning to their native place. During course of their returning to their native places, the aforesaid incident took place. Even during cross-examination, nothing substantial has been found save and except that the victim was sitting over another seat while she was along with her Nanad PW-2 was sitting at another seat and in likewise manner, the other members of group. She had further stated that her daughter had slept in the train. They had denied the suggestion that as bogie was dark and so, the victim while going to wash-room fell down and the appellant acting as a good Samaritan jumped out from the train to save her.

18. After having analytical approach of the evidence adduced on behalf of prosecution, it is evident that prosecution had



substantiated its case beyond all reasonable doubt. So far finding with regard to Section 366A of the IPC is concerned, there happens to be no evidence on the record to suggest that kidnapping was for forcing the victim to indulge in sexual activity whereupon, the judgment impugned needs intervention to that extent. While exercising the appellate power, the finding recorded by the learned lower court to that extent is hereby annulled under Section 368 of the IPC . So far conviction and sentence relating to remaining Section 354, 363 and 304(II) IPC are concerned, that will remain inconsonance with the sentence having been inflicted therefor. Accordingly, the appeal is dismissed in terms of aforesaid finding.

19. Appellant is under custody which he will till saturation of the sentence

20. The first and the last pages of the instant judgment be handed over to the learned Amicus Curiae.

(Aditya Kumar Trivedi, J)

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