

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.569 of 2002

=====

Megh Nath Sah, son of Narsing Sah, resident of Village- Sitalpatti, P.S. Pipra,
District- East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s :

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

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 14-10-2017

In Sessions Trial No. 161 of 2002 the Additional District and Sessions Judge, Fast Track Court No. 4, East Champaran, Motihari vide judgment dated 11th of September, 2002 convicted the appellant to five years' imprisonment with fine of Rs. 1,000/-, 1500/- for offence under Section 363, 366A I.P.C. and in default of payment of fine, to undergo 3, 4 months further imprisonment respectively, challenging the same this appeal has been filed by the appellant.

It is the case of the prosecution that an F.I.R. was lodged by the informant Shanti Devi on 08.08.1999 at about 7:00 P.M. that her daughter (hereinafter referred to as "prosecutrix"), aged about 13 years had gone out of her house to attend the call of nature. She was taken/enticed by accused appellant Megh Nath Sah and her daughter was not found. A



case of abduction for marriage was made out. Thereafter, the police investigated into the matter, submitted the charge-sheet and the appellant has been prosecuted for the offence under Sections 363, 376 and 366A of the Indian Penal Code. As far as offence under Section 376 I.P.C. is concerned, the learned court has held that offence under this section has not been made out as there is no medical evidence or even statement of the prosecutrix to make out an offence under Section 376 I.P.C. but finding that the prosecutrix was below 18 years of age, the offence under Sections 363 and 366A I.P.C. are said to have been made out.

The only ground for convicting the appellant is that the prosecutrix is below 18 years of age and this finding of the learned court below is made only on the basis of the ocular statement of the witnesses to say that the prosecutrix was about 13 or 15 to 16 years of age. No documentary evidence like her birth certificate, School Leaving Certificate, School Register or other document from the school has been produced inspite of the fact that she is said to be a child studying in a school i.e. Class-IX. However, records further indicate that the prosecutrix after she was recovered and after she came back home about a month or so after the incident in question was subjected to



medical examination and surprisingly the doctor who medically examined her was not produced before the court but the learned court took notice of the fact that in the medical evidence available in the case diary the doctor has estimated the age of the prosecutrix to be between 16 to 17 years of age.

It was the case of the defence before the court below that if the doctor's opinion is that the age of the prosecutrix is 16 to 17 years then applying the principle of +2 to the same, the age would be beyond 19 years and, therefore, in the absence of there being any document or specified evidence available with regard to the age, the benefit should go to the appellant, particularly when the evidence and defence of the appellant was a false implication because of rivalry and cases between the parties.

In my considered view, the only reason as to why the learned trial court has convicted the appellant is that in the medical report that has come on record, the prosecutrix is shown to be used to sexual intercourse and in the medical report her age is shown to be 16 to 17 years of age. If that be so, and if the principle of adding two years + - to the age is applied, then as argued by the learned counsel for the appellant the age of the prosecutrix could be beyond 19 years and if that be the legal



position in the facts and circumstances of the case, the benefit of this has to go to the appellant.

Keeping in view the aforesaid, the appeal is allowed, the conviction of the appellant vide judgment dated 11th of September, 2002 passed in Sessions Trial No. 161 of 2002 by the Additional District & Sessions Judge, Fast Track Court No. 4, East Champaran, Motihari is set aside, the appellant is discharged from the liability of bail bond and directed to be set free.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.10.2017
Transmission Date	

