

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1 of 2007

Arising Out of PS.Case No. -0 Year- null Thana -null District- MADHEPURA

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Shiv Kumar Suman, son of Sri Pulkit Sah, resident of village Khajedih, P.S. Ladania, District- Madhubani.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate.
Ms. Kiran Thakur, Thakur, Advocate.
Ms. Babita Kumari, Advocate.
Mr. Malay Kumar Choudhary, Advocate.
For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 19-01-2017

Heard learned counsel for the Appellant and
learned counsel for the State.

2. The Appellant has been convicted under Sections 366 and 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 7 years on each count, vide Judgment dated 11.12.2006 and Order dated 13.12.2006 passed in Sessions Trial No. 144 of 2004 by the court of Additional Sessions Judge, Fast Track Court No. II, Madhubani.

3. The prosecution case as set out in the written report of informant, Santosh Kumar Mahto (P.W.5) is that his sister, Rani Kumari (P.W.4), aged about 16 years, was student of Class-X and she used to attend tuition at Brilliant Coaching Center,



Laheriyaganj of appellant, Shiv Kumar Suman. On 20.05.2003, in the morning, his sister Rani Devi (P.W.4) moved from house for practical in G.M.S.H. High School but she did not return. Thereafter, he and his relatives searched his sister but no trace was found. He also searched to teacher, Shiv Kumar Suman (appellant) but he was also found absent at his house. In course of search, on 28.05.2003, he had gone to Railway Station, Darbhanga then saw that his sister (P.W.4) and teacher (appellant) were sitting on a bench at Platform No. 1. Thereafter, both were handed over to G.R.P., Darbhanga. Further allegation of informant (P.W.5) is that his sister (P.W.4) was enticed away by teacher (appellant).

4. During trial, the prosecution examined altogether six witnesses out of which P.W.6 Ali Ahmad is formal witness, who has only proved the formal F.I.R. as Ext.4.

On the other hand, the defence examined only witness, Hitendra Kumar Choudhar, Notary Public, as D.W.1, who formally proved the affidavit of the victim (P.W.4) prepared by him.

5. P.W.5, Santosh Kumar Mahto, who is the informant and brother of victim (P.W.4), has stated that at the time of occurrence his sister (P.W.4) was the student of Class-X and she also used to go for coaching at Brilliant Coaching Center of, Shiv Kumar Suman (appellant). On 20.05.2003, his sister (P.w.4) moved from



house in the morning for coaching but she did not return. While he searched his sister (P.W.4) in the evening but no trace was found. On 28.05.2003, he had gone to Darbhanga and reached, at about 10 P.M., at railway station, where he saw his sister (P.W.4) and Shiv Kumar Suman (appellant) sitting there. Thereafter, he approached to G.R.P. Darbhanga and submitted the written report. He proved the written report as Ext.3. He further stated that his sister (P.W.4) informed him about her kidnapping and carrying her at Calcutta and committing rape by Shiv Kumar (appellant). He further stated in his cross-examination that when he reached at Darbhanga Railway Station at 10 P.M. then saw his sister (P.W.4) and appellant sitting at Platform No. 1 and no other passenger was present there. His sister had not gone with him at G.R.P. Police Station, Darbhanga rather he asked her to sit there. He further stated that he along with his sister (P.W.4) and Shiv Kumar (appellant) were present at G.R.P. Police Station, Darbhanga till 3 A.M. on 29.05.2003. He further stated in paragraph 5 of his cross-examination that he had stated before the police that Shiv Kumar (appellant) appellant had taken his sister (P.W.4) forcibly at Calcutta. He has further stated that he had not gone to school for query whether his sister (P.W.4) had appeared in practical examination or not. He has further stated in his cross-examination in paragaraph 12 that his father had left the village



before 5 to 6 months of occurrence and he returned at house after six months of the occurrence.

6. P.W.1, Shail Devi, is the mother of the victim (P.W.4). She has stated in her evidence that her daughter had gone to school for practical examination but she did not return. She and her family members searched her daughter but no trace was found. Her daughter used to attend the coaching at the coaching centre of Shiv Kumar Suman (appellant). She also went to the house of the Shiv Kumar Suman but no trace of her daughter was found. On 28.05.2003, his son Santosh Kumar Mahto (P.W.5) saw her daughter and Shiv Kumar Suman (appellant) sitting on a bench at Platform No. 1 at Railway Station, Darbhanga, then her son (P.W.5) informed to G.R.P., who caught hold both and carried at Madhubani Police Station. On talk, her daughter informed that Shvi Kumar Suman (appellant) told her that her father had come near the school then she came out from school where three persons were present and boarded her and carried to Railway Station, Samastipur, from where, Shiv Kumar Suman (appellant) boarded her in train for Calcutta and committed rape with her. She further stated that her husband was at Delhi since before six months of occurrence and he returned to house after the occurrence. She has also stated that she talked with her husband on mobile one day after the occurrence and her husband



returned to the house after 10 days of the occurrence. She further stated in her cross-examination that she had stated before the police that appellant told her daughter that father is sitting out side of school and when she came out to the school, then three persons boarded her forcibly in Maruti Car. She also stated before the police that her daughter was taken at Samastipur, from where, she was taken to Calcutta, where Shiv Kumar Suman committed rape on her. She further stated that the @ name of her daughter is “Swati”. She also stated that her daughter used to go to school with her friend but she did not make query about her daughter to her friend.

7. P.W.4, Rani Kumari, who is the victim, has stated in her evidence that at the time of occurrence, she was student of Class X and she used to go to Brilliant Coaching Center of Shiv Kumar Sumam (appellant). At the time of occurrence, there was no trace of her father. She had gone to G.M.S.H. High School in the morning for practical examination then Shiv Kumar Suman (appellant) came in school and told that her father has come and called her. Thereafter, she came out to the school and went with the appellant in a lane, where one boy was present with Maruti Car, 2-4 boys were also present there. Shiv Kumar Suman boarded her in Maruti Car forcibly. When she tried to raise alarm then she was threatened of dire consequences due to that reason she could not raise



alarm. Thereafter, Shiv Kumar Suman (appellant) carried her to Samastipur Railway Station and she was boarded in train of Calcutta. Shiv Kumar Suman kept her in a room for about one week in Calcutta where he used to commit rape on her. One day, Shiv Kumar Suman, had gone out side of room then she came on the chowk and narrated about the incident to one person, who boarded her in train of Darbhanga. Shiv Kumar Suman also boarded in another boggy of that train. When she got down to train at Darbhanga Railway Station then Shiv Kumar Suman also got down to the train and caught hold her hand and sat on the platform. Her brother (P.W.5) saw her and Shiv Kumar Suman at platform and he carried both at G.R.P. Police Station, from where, both were sent to Madhubani Town Police Station. Thereafter, she was produced before the court by the police, where she gave her statement and put her signature. She proved her signature on her statement as Ext.2. She further stated that before the occurrence she had not made any complaint against Shiv Kumar Suman and her father was missing before her attaining the consciousness. She further stated that she was kept in Calcutta by Shiv Kumar Suman in rented room. One person, who was brother in relation of Shiv Kumar Suman, used to bring meal when Shiv Kumar Suman used to go out side, he used to reside in the room lonely. She further stated that she did not know at which railway station she was



boarded in the train, the fair of railway ticket was paid by the person who accompanied her at railway station. When she got down to the train at Darbhanga Railway station then Shiv Kumar Suman also got down from to that train. In destination between the Calcutta to Darbhanga, she did not meet with Shiv Kumar Suman. She further stated that she reached at Darbhanga Railway Station in the evening and after two and half hours, her brother (P.W.5) met with her but there was no talk in between her and her brother P.W.5). Her brother carried her at G.R.P. Police Station, Darbhanga.

8. P.W.2, Dr. Nirmala Kumari, has stated in her evidence that, on 29.05.2003, she was posted at Sadar Hospital, Madhubani, as Medical Officer. On same day, at about 5.00 PM, she examined the victim (P.W.4). The age of the victim was 17 years according to report of radiologist Dr.N.K. Singh (P.W.3). High 4'10", weight 43 Kg, Teeth 14 each Jaw.

(1) No external and internal injury was found at the time of examination. Breast-developed. Auxiliary and pubic hair- present. Vagina- healthy. Discharge-present. Hymen was ruptured which admitted one finger.

(2) Vaginal swab was examined by Dr. P.N. Prasad, reporting spermatozoa not seen.

She proved the medical report of victim (P.W.4) as Ext.1 and according to her victim (P.W.4) had sexual intercourse.



9. P.W.3, Dr. Nawal Kishore Singh, has stated in his evidence that on 29.05.2003 X-ray report of victim (P.W.4) was given by him and according to report the age of victim (P.W.4) was 17 years.

10. Learned counsel appearing for the appellant submits that while the informant Santosh Kumar Mahto (P.W.5) and Shail Devi (P.W.1), brother and mother of victim (P.W.4) have stated in their evidence that the victim (P.W.4) was student of Class X at the time of occurrence and her age was 16 years but no document has been produced regarding the age of the victim (P.W.4). P.W.3, Dr. Nawal Kishore Singh has stated in his evidence that according to X-ray report and radiological finding, the age of victim (P.W.4) was 17 years. The learned counsel for the appellant further submitted that victim (P.W.4) in her evidence stated that she was boarded in train at Railway Station, Samastipur and carried at Calcutta where she was kept by the appellant in rented room about one week and during one week, she was alone in the room for sometimes but she did not make complaint to anyone. As such, the conduct of victim (P.W.4) shows that she was not kidnapped by the appellant rather she left the house according to her swill and joined the company of the appellant and deprived physical relation according to her sweet will.

11. From the evidence of victim (P.W.4), it is



apparent that she was boarded at Samastipur Railway Station in train by the appellant and she was kept at Calcutta in rented room for one week and during that period she had occasioned to live in the room alone but she did not make complaint to any one about her kidnapping and committing rape by the appellant. She also stated that when she got down to the train at Darbhanga Railway Station, appellant also got down to the same train and both were sitting at bench about two hours till reaching of his brother Santosh Kumar Mahto (P.W.5) but she did not raise alarm. She has also stated that she was called by the appellant on the pretext that her father who was missed since before her consciousness but her brother, Santosh Kumar Mahto(P.W.5) and mother Shail Devi (P.W.1) have stated in their evidence that father of victim had gone to Delhi before 5-6 months of the occurrence and he returned to house after 10 days of the occurrence.

12. The evidence of victim (P.W.4) clearly indicates that in spite of having the opportunities on various occasion during the travel in train from Samastipur to Calcutta, during stay of one week in Calcutta and also at Railway Station, Darbhanga till reaching of Santosh Kumar Mahto (P.W.5) she neither raised alarm about her kidnapping nor made complaint to anyone. As such, it could be inferred that the appellant had committed the alleged act



with consent of the victim.

13. Having considered the facts and circumstances of the case ad the evidence as discussed above, I come to conclusion that the prosecution has not been able to prove the charges under Sections 366 and 376 of the Indian Penal Code beyond all reasonable doubts against the appellant. In the result, this appeal is allowed. The impugned Judgment of conviction and Order of sentence dated 11.12.2006 and 13.12.2006 passed by the Additional Sessions Judge, Fast Track Court No. II, Madhubani, in connection with Sessions Trial No. 144 of 2004 is set aside. The Appellant, who is on bail, discharged from the liabilities of his bail bonds.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

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