

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.421 of 2015

Arising Out of PS.Case No. -162 Year- 2014 Thana -AURAI District- MUZAFFARPUR

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Harinder Sahni @ Harendra Sahni S/o Mundirka Shani Resident of Village -
Nandana, P.S. Minapur, District - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Kamli Devi S/o - Siyaram Sahni Resident of Village - Vistha Bada, P.S. -
Auraoi, District - Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anurag Saurav, Adv.
Mr. Dharmendra Kumar Paswan, Adv.
For the Respondent/s : Ms. Sharda Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 22-11-2017

Appellant Harinder Sahni @ Harendra Sahni has been found guilty for an offence punishable under Section 366A/34 of the Indian Penal Code and sentenced to undergo R.I. for five years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo S.I. for six month, additionally, vide judgment of conviction dated 23.06.2015 and order of sentence dated 26.06.2015 passed by Additional District Judge IX, Muzaffarpur in Sessions Trial No. 942/2014.

Kamli Devi P.W. 2 filed a written report on 09.08.2014 alleging inter alia that her daughter Khushbu Kumari aged about 15



years who had gone to defecate on 07.08.2014 at about 9.00 a.m. was enticed away by the son-in-law of Ramsakal Sahni namely, Harinder Sahni with an intention to marry which was seen by the villagers as well as disclosed by them. It has also been narrated that aforesaid Harinder Sahni was in contact with her daughter over mobile.

After registration of Aurai P.S. Case No. 162/2014 on the basis of the aforesaid written report, investigation commenced and concluded by way of submission of charge-sheet paving way for trial which ultimately concluded in a manner subject matter of the instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial. However, neither oral nor documentary evidence has been adduced during course of trial.

In order to substantiate its case the prosecution had examined altogether five P.Ws., out of whom P.W. 1 Shaildeep, P.W. 2 Kamli Devi, P.W. 3 Reeta Devi, P.W. 4 Khusbu Kumari, the victim and P.W. 5 Smt. Ranjula Bharti, the Magistrate who had recorded statement under Section 164 of the Cr.P.C. of the victim. Side by side had also exhibited exhibit-1 written report, exhibit-1/1 signature of P.W. 4, the victim over statement recorded under Section 164 Cr.P.C., as well as exhibit-2 statement recorded under Section 164 Cr.P.C. As



disclosed hereinabove, neither ocular nor documentary evidence has been adduced on behalf of the appellant.

From perusal of the evidence available on the record, it is crystal clear that it happens to be a case of no evidence. P.W. 1 and P.W. 3 have not supported the case of the prosecution and that being so, were declared hostile. More or less the conduct of P.W. 2 informant as well as, P.W. 4 the victim happens to be in similar facet. Though, during course of evidence P.W. 2 informant had reiterated the allegation whatever been incorporated in the written report, but she had not disclosed the name of villager from whom she came to know regarding enticing away the victim P.W. 4 by the appellant Harinder Sahni. Moreover, she had disclosed the age of the victim at the time of occurrence to be 19 years. During course of cross-examination she had admitted that she had not seen the occurrence. So far, P.W. 4, victim is concerned, she had not alleged against the appellant Harinder Sahni to have enticed away and that being so, examination of the Magistrate as well as, exhibit of the statement under Section 164 Cr.P.C. is not going to improve the fate of the prosecution because of the fact that statement recorded under Section 164 Cr.P.C. does not happen to be the substantial evidence.

That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.



Appellant is on bail, hence, he is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.11.2017
Transmission Date	23.11.2017

