

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.11 of 2007

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

Against the judgment of conviction and order of sentence dated 11th & 13th December, 2006, respectively passed by the Additional District & Sessions Judge, Fast Track Court III, Munger, in Sessions Case No.385 of 2004

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Bimal Kumar Poddar, son of Sri Raju Poddar, resident of Marwari Tola, P.S.-
Khadagpur, District- Munger

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

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Criminal Revision No. 1106 of 2007

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

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Indu Bhagat, wife of Madan Prasad Bhagat, resident of Block Colony, Haveli
Kharagpur, P.S.-Haveli Kharagpur, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar &
2. Bimal Kumar Poddar, son of Sri Raju Poddar, resident of Marwari Tola
Kharagpur, P.S.-Kharagpur, District- Munger

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.11 of 2007)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Raj Shekhar, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

For the Informant : Mr. Mukesh Kumar Singh, Advocate
Mr. Shiv Jee Singh, Advocate

(In CR. REV. No.1106 of 2007)

For the Petitioner/s : None

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 16-11-2017



1. Criminal Appeal No.11 of 2007 has been filed against the judgment of conviction and order of sentence dated 11th & 13th December, 2006, respectively passed by the Additional District & Sessions Judge, Fast Track Court III, Munger, in Sessions Case No.385 of 2004, by which the appellant has been convicted under Section(s) 366-A and 511 Indian Penal Code and sentenced to under go rigorous imprisonment for three years under both counts.

2. Criminal Revision No.1106 of 2007 has been filed by the Informant against the same judgment and order of sentence for enhancement of sentence of the Opposite Party No.2-appellant.

3. Case of the prosecution, in short, is that daughter of the Informant was in the house on 19.07.2003. At about 5.30 PM, Informant was coming to her house from her Beauty Parlour and when she reached near the house she saw the appellant was trying to take away her daughter, Monam Kumari, with intention to kidnap her. She raised *halla* and rushed towards house, and also tried to apprehend and overcome him, but he fled away by jumping *Taati*.

4. Counsel for the appellant has submitted that there are apparent contradictions in the evidence of witnesses during trial. He has submitted that PW 1 (Shekhar Kumar) is not an eye witness. PW 2 (Madan Prasad Bhagat) is not named in the First Information Report, but he has deposed as an eye witness. PW 3 (Smt. Indu



Bhagat) is the Informant of the case. PW 4 (Kumari Monam) is the victim girl, who has stated in her evidence that at the time of occurrence she was inside the house and this appellant attempted to drag her from the house. Statement of PW 2, 3 and 4 was also recorded under Section(s) 164 Cr. P. C.

5. Counsel for the appellant has submitted that in the statement under Section(s) 164 Cr. P. C. all these witnesses have tried to improve the case.

6. Learned counsel for the Informant has appeared and submitted that the victim girl in her statement under Section(s) 164 Cr. P. C. as well as in her evidence as PW 4 has stated that she was inside the house when the appellant attempted to drag her from house. He has further submitted that her mother (PW 3) has stated that when she came near her house, she heard cry of her daughter and the appellant was trying to drag her from the house. Counsel for the Informant has further submitted that in the First Information Report it is mentioned that when the informant reached near the house, she saw that the appellant was dragging her minor daughter with bad intention to kidnap her.

7. Lower court records have been received. Perused the entire evidence of the witnesses.

8. PW 1 is a hearsay witness. He has stated in his



cross-examination that he was not present at the place of occurrence. He learnt about the occurrence.

9. PW 2 is father of the victim girl, who has stated in his examination-in-chief that he saw the occurrence when he was returning from market with his wife after purchasing vegetables.

10. PW 3 is wife of PW 2 as well as Informant and also mother of the victim girl. She has stated in her examination-in-chief that she was returning from Beauty Parlour and was at some distance from her house, then heard cry of her daughter and when she proceeded further, she found this appellant was dragging her daughter with intention to kidnap her. She raised *halla* then he fled away after jumping *Taati*.

11. PW 4 (victim girl) in her examination-in-chief has stated that at the time of occurrence she was inside the house and studying. In the meantime, this appellant came inside the house and started dragging her by catching hold her hand. In the meanwhile, her father and mother arrived and they tried to apprehend the appellant but he managed to run away after jumping *Taati*.

12. Defence has examined one witness, Abdul Quaiyum as DW 1 to show that there was previous enmity between the parties. Defence has also filed Complaint Petition of Complaint Case No.639-C of 2003 filed by this appellant against the father of



the victim girl to show that there was previous enmity between the appellant and the Informant.

13. From the evidence of prosecution witnesses, as discussed above, it appears that there are contradictions in the evidence of victim (PW 4) and the other two eye witnesses PW 2 and PW 3.

14. Statement of the victim girl as well as PWs 2 and 3 was recorded under Section(s) 164 Cr. P.C., which have been marked as exhibits. From perusal of the statement of the aforesaid three witnesses, it appears that they have tried to further improve the case, which only creates doubt about the prosecution case. The victim girl in her statement under Section(s) 164 Cr. P. C. has stated that this appellant was dragging her. She has further stated that when she cried, her mother and father came and tried to apprehend the appellant but he managed to flee away.

15. Therefore, on the basis of evidence of aforesaid prosecution witnesses, this Court is of the view that the prosecution has not been able to substantiate the Charges levelled against the appellant beyond all reasonable doubt. The Trial Court has convicted the appellant without properly appreciating the evidence of the witnesses.

16. Accordingly, impugned judgment of conviction



and order of sentence dated 11th & 13th December, 2006, respectively passed by the Additional District & Sessions Judge, Fast Track Court III, Munger, in Sessions Case No.385 of 2004, is hereby set aside. The appellant is acquitted of the Charges levelled against him and is discharged from the liabilities of his bail bond.

17. In the result, Criminal Appeal (SJ) No.11 of 2007 is allowed.

18. Since this Court finds that conviction of the appellant is not in accordance with law and has set aside the same, Criminal Revision No.1106 of 2007 is hereby dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-12-2017
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