

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.293 of 2015**

Arising Out of PS.Case No. -288 Year- 2012 Thana -BIHPUR District- BHAGALPUR

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1. Md. Kare @ Md. Asfak, Son of Late Md. Seraj, Resident of Bhagwatipur, P.S. Bihpur, P.O. Bihpur, District- Bhagalpur.

.... .... Appellant/s

Versus

1. The State of Bihar (through Md. Sakil Naddaf Informant)

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Syed Md. Najmul Bari, Advocate  
Mr. Syed Mohtashim Akhtar, Advocate

For the Respondent/s : Mr. S. C. Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 15-05-2017**

Sole appellant, Md. Kare @ Md. Asfak on account of having been convicted for an offence punishable under Sections 366 IPC, 504 IPC, 506 IPC and sentenced to undergo RI for 10 years as well as fine of Rs. 10,000/- payable to the victim and in default thereof, imprisonment of one year additionally, imprisonment of two years respectively under each head by Additional Sessions Judge- 2<sup>nd</sup>, Naugachia, Bhagalpur vide judgment of conviction dated 25.03.2015 as well as order of sentence dated 04.04.2015 in Sessions Trial No. 372/2013, filed the instant appeal.

2. PW-3, Md. Sakil Naddaf filed a Complaint Petition Bearing No.363/2012 which was sent to the concerned police station for registration and investigation in accordance with Section 156(3) of the CrPC having an allegation that on 12.05.2012 at about 3.30 AM



while he along with his wife and children were sleeping, one Bolero Vehicle parked and then, thereafter, Md. Kare @ Md. Asfak began to call his wife and further, instructed to rush quickly. He begged his wife not to indulge in such kind of activity as it will cost his prestige in the society whereupon, Md. Kare @ Md. Asfak threatened and then, Rukhsana Begam accompanied Md. Kare @ Md. Asfak who took out ornaments, cash appertaining to Rs.1500/-. The complainant had not spoken to anybody regarding the occurrence but on 28.05.2012 at about 6:00 PM, while he was returning from Lattipur Chowk after taking vegetables he saw, Md. Kare @ Md. Asfak whereupon, he enquired about his wife as well as requested to release so that she could look after her four children over which, again Md. Kare @ Md. Asfak threatened. It has also been disclosed by him that he will keep his wife according to his wish and desire. It has further been disclosed that even before 12.05.2012, accused, Md. Kare @ Md. Asfak had taken away his wife several times and after spending 2-4 days with her, returned her to his place. Even on Panchayati, accused was scolded and was instructed by the members of Panchayat that he should not indulge in such kind of nefarious activities but he did not pay heed to it. Furthermore, a disclosure has also been made that he had gone to police station but the police had declined to register a case.



3. On the basis of the copy of the complaint, on receipt of the copy of complaint petition, Bihpur PS Case No. 288/2012 was registered under Sections 366, 504 and 506 IPC and took up the investigation. After completing the same, charge-sheet was submitted which ultimately paved the way of trial meeting with the ultimate result, the subject matter of the instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial and of false implication. In an alternative, it has also been pleaded that the alleged victim, a major being inclined in favour of appellant had volunteered herself and so, no offence is made out and for that statement recorded under Section 164 Cr.PC as well as endorsement of the victim over the order-sheet have been made an exhibit on behalf of the defence. However, no, DW has been examined.

5. In order to substantiated its case, the prosecution had examined altogether 10 PWs out of whom PW-1 is Madina Khatoon, mother-in-law of the victim, PW-2, Md. Mangan Naddaf, father-in-law of alleged victim, PW-3, Md. Sakil Naddar, husband of the victim, PW-4 is Md. Gufran, PW-5 is Md. Salim, PW-6 is Md. Sudhir, PW-7 is victim, Rukhsana Begam, PW-8 is Md. Abbas, PW-9 is Md. Sajjad Rain, and PW-10 is Md. Ehtesam Alam Khan, the



Investigating Officer. Side by side, had also exhibited, Ext-1, Signature of the informant over formal FIR, Ext-2, Formal FIR, Ext-2, Signature of O/C over formal FIR, Ext-3, Medical Report.

6. PW-1, Madina Khatoon, mother-in-law had deposed that on the alleged date and time of occurrence, while she was sleeping in the courtyard, Md. Kare @ Md. Asfak caller for her daughter-in-law directing to come out form the house. Md. Kare @ Md. Asfak came over a Bolero Jeep. Then she saw Md. Kare @ Md. Asfak coming inside her house who, after breaking the box, took out ornament made up of silver, ear ring, nose pin, cash appertaining to Rs. 1500/- He also took away her daughter-in-law over Bolero Jeep. She further disclosed that her daughter-in-law is mother of four children. During cross-examination, she had admitted that her statement was recorded by the police after the occurrence. In para-6, there happens to be contraction which is found corroborated by the PW-10, Investigating Officer in para-11. In para-7, she had stated that house of Md. Kare @ Md. Asfak lies adjacent to her house intervened by a road. In para-8, she stated that when she saw the accused, he was inside her house. After 5-10 minutes, he had gone inside the room of his daughter-in-law. They had prayed that he should not take away their daughter-in-law but did not accede. In para-9, she admitted that at the time of occurrence, her daughter-in-law was aged about 30 years. She had



further stated that she is unaware whether Rukhsana has been recovered or not. She has further admitted that Rukhsana had instituted a case against them.

7. PW-2 is Md. Mangan Naddaf, father-in-law who during examination-in-chief had reiterated the version of the PW-1, save and except that three other were also along with Md. Kare @ Md. Asfak. Furthermore, Md. Kare @ Md. Asfak dragged his daughter-in-law and then, took away on Bolero Jeep. He had further disclosed that Md. Kare @ Md. Asfak had taken away ornaments, cash after unlocking the box. During cross-examination at para-5 had stated that they had prayed before the Court to direct the police to recover his daughter-in-law from the house of Md. Kare @ Md. Asfak but she was not recovered. House of Md. Kare @ Md. Asfak lies at the distance of one Lagga from his house. In para-6, he had deposed that Md. Kare @ Md. Asfak used to ply tempo at Bhagalpur. At para-8, there happens to be contradiction and the same is found corroborated with the evidence of PW-10, the Investigating Officer at para-12. In para-11, he had stated that no sooner than parking of vehicle took place in front of his house, all the family members awaken. He has further stated that Md. Kare @ Md. Asfak came inside his house and then called his daughter-in-law to come out. They had begged but he did not pay heed to them. He had further deposed that he remained for about 5-10 minutes inside the room of



his daughter-in-law. Then had stated that after departure of the accused, he raised alarm.

8. PW-3 is the informant, husband who had deposed that on the alleged date and time of occurrence, he was sleeping along with his wife and children inside the room. Other members were also sleeping in the house. At that very time, Md. Kare @ Md. Asfak came over a vehicle. He awoke and then saw four persons out of whom he recognized Md. Kare @ Md. Asfak. All the four persons were armed variously. They came inside the house and began to call his wife. He begged and requested Md. Kare @ Md. Asfak not to accompany his wife but he did not pay heed and took away his wife. Md. Kare @ Md. Asfak also took away ornaments as well as cash appertaining to Rs. 1500/-. During cross-examination, para-4 happens to be contradiction relating to complaint/written report, however, no major portion has been confronted. In para-6, he had admitted that house of accused lies at a distance of 2-3 hands away from his house. He had further admitted that at the time of alarm, none came. Police came in search of Kare so many times at night. Md. Kare @ Md. Asfak stayed at his house for about 10 minutes. He had further admitted that Md. Kare @ Md. Asfak began to call his wife from the road itself and in the same manner, came inside calling his wife. In para-7, he had stated that accused persons lifted his wife. He had further stated that only Md. Kare @ Md.



Asfak had accompanied his wife. He further stated that his wife had protested but during course thereof, there was no scuffle. He had further stated that accused had not lifted his wife rather his wife was proceeding ahead followed by the accused persons. The vehicle of the accused was parked in front of his house. His wife had not protested/resisted at the time of boarding. He had further submitted that after 12 months of the occurrence, his wife returned back. He had further stated that he had not taken his wife to the police station for her statement. His wife on her own had gone to the police.

9. PWs-4, 5 and 6 have not supported the case of the prosecution, on account thereof, they were declared hostile. Even then, the prosecution could not get anything positive in their favour from them.

10. PW-7 is the victim who had deposed that on the date and time of occurrence while she was sleeping with her family members, one vehicle parked in front of her house. Md. Kare @ Md. Asfak came inside calling her name and then, began to drag her forcibly. On the point of fire arm, Md. Kare @ Md. Asfak forced her husband to go outside the room and then thereafter, unlocked her box, taken out ornaments and cash appertaining to Rs. 1500/-. Thereafter, Md. Kare @ Md. Asfak forcibly dragged her towards the vehicle. During course thereof, all her family



members were begging to leave her but Md. Kare @ Md. Asfak did not accede to and took her to his place at Village-Rampur and kept there. She remained there for four months. Her husband had instituted this case on account of which police recovered her from the house of accused. During cross-examination at para-7, she had stated that police did not record her statement. Police had recovered her from the house of Md. Kare @ Md. Asfak. Her house along with house of accused lies in front of each other. Police had taken her to the court where her statement was recorded. In para-8 and 9, there happens to be contradiction relating to her statement recorded under Section 164 CrPC. In para-10, she had admitted that Shamima Khatoon happens to be mother of Md. Kare @ Md. Asfak and then had denied the suggestion at the end of accused that she had gone along with Shamima after recording of her statement under Section 164 CrPC as she desired to go along with her, on a query made by a Magistrate and on that very score her signature has been made an exhibit as Ext-B.

11. PW-8 is Md. Abbas, a co-villager who had deposed that he knew the informant as well as Md. Kare @ Md. Asfak. He also identified the victim, wife of informant who is residing with her husband. During cross-examination, he had stated that being a co-villager, he identified those persons. His evidence is not at all on the factum of so alleged occurrence.



12. PW-9 Md. Sajjad Rain, who had deposed that on the alleged date and time of occurrence, he was at his house and after hearing sound of uproar, he came to the house of Sakil where he saw one vehicle parked and few persons were standing. One box was kept there. Then he saw Md. Kare @ Md. Asfak taking away wife of Sakil on the vehicle. During cross-examination at para-3, he had deposed that when he came to the house of Sakil, he had seen only Md. Kare @ Md. Asfak. Again had stated that others were also present but he is unable to disclose their names. There were 14-15 persons present. In para-4, there happens to be contradiction and is found duly corroborated with the evidence of PW-10, the Investigating Officer at para-13.

13. PW-10 is the Investigating Officer. He had deposed that on 16.08.2012 on the basis of an order passed by the court under Section 156(3) CrPC, O/C had registered the instant case and then investigation was entrusted to him. He took up investigation. He had gone to the place of occurrence which happened to be village- Lattipur Choti Railway Line, Village- Bhagwatipur house of Sakil which happens to be made up of mud and tiles. He recorded statement of the witnesses. He got statement of victim recorded under Section 164 CrPC. She also got medically examined. He received medical report and then, after concluding investigation, filed charge-sheet. During



cross-examination at para-7, he had deposed that he had recovered victim on 05.09.2012 from the village itself. He had further stated that at the time of seizure, the local inhabitants were present. In para-9, he had further stated that he had not mentioned the distance in between the house of informant as well as accused. He had not recorded presence of persons having in boundary nor he took their statement. In para-10, he had further stated that at the time of statement under Section 164 CrPC, victim was mentally sound. He had further stated that thereafter, Rukhsana, victim was handed over to her mother-in-law, Shamima Khatoon who happens to be the mother of Md. Kare @ Md. Asfak.

14. Though at an initial stage, there were a specific disclosure at the end of informant that appellant was very much used to be in the company of his wife at due interval, however, the aforesaid theme was purposely left during course of evidence, more particularly, by PW-3 and in likewise manner, the defence also failed to confront PW-3 in terms of Section 159 of the Evidence Act. That being so, the aforesaid event had slipped from the hands of the appellant.

15. Coming to the other aspect, though the victim, PW-7 was cross-examined with regard to her previous statement made under



Section 164 of the CrPC but, due to non examination of Magistrate, that has gone worthless but, even then, her presence over the order-sheet marked as Ext-B is taken together with the evidence of PW-10, the Investigating Officer whereunder he had categorically stated that the victim was handed over to her mother-in-law, Shamima Begam who happens to be mother of appellant, Md. Kare @ Md. Asfak, speaks a lot over unnatural activity of the victim.

16. The aforesaid conduct, as is evident, clearly indicated that the victim at the relevant time and even thereafter was inclined towards the appellant and on the basis thereof, the allegation as alleged by the prosecution, became doubtful. The aforesaid theme has got additional support when the evidence of PW-7, victim is gone through whereunder, she had stated that the accused had taken her to his house at Village-Rampur which, none of her family member, that means to say, PWs, 1, 2 and 3 have supported and in likewise manner, the Investigating Officer, PW-10. The victim had disclosed that she was recovered from the house of the accused, Md. Kare @ Md. Asfak, then in that event, she must have been recovered from village-Rampur and if the aforesaid evidence is accepted, then in that event, the evidence of PWs-1, 2 and 3 including she herself that house of Md. Kare @ Md. Asfak in front of her house intervened by a road, is found sufficient to dent over the case of the prosecution coupled with the



fact that the Investigating Officer, PW-10 who had found the victim loitering in the village and during course thereof, was taken into custody.

17. Apart from this, there happens to be consistent evidence including that of victim PW-7 that she stayed in the house of the appellant for quite a long time without any hitch and hindrance, without raising any sort of objection, without attempting to flee therefrom without taking any legal recourse, more particularly, when she herself disclosed that accused used to ply auto-rickshaw at Bhagalpur and so, have ample opportunity, in case was not a consenting party, to flee therefrom. Therefore, the cumulative effect as is being perceived from the nature of the evidence having been adduced by the prosecution, did not inspire the concurrence of the finding recorded by the learned trial court identifying the appellant guilty for an offence punishable under Sections 366 of the IPC.

18. That being so, giving anxious consideration to the facts and circumstances of the case as well as minute observation to the evidence adduced on behalf of prosecution, it is found and held that prosecution has miserably failed to substantiate its case beyond all reasonable doubts.

19. Consequent thereupon, judgment of conviction and order of sentence recorded against the appellant, by the learned lower



court, is set aside. Appeal is allowed.

20. Since the appellant is on bail, he is directed to be discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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| CAV DATE          | N/A        |
| Uploading Date    | 18.05.2017 |
| Transmission Date | 18.05.2017 |

