IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.670 of 2015

Arising Out of PS.Case No. -77 Year- 2012 Thana -KASIMBAZAR District- MUNGER

==========

1. AMIT KUMAR SON OF LATE ANIL SAH
2. ANAND KUMAR SON OF LATE ANIL SAH
3. SHOBHA DEVI WIFE OF LATE ANIL SAH

ALL ARE RESIDENT OF VILLAGE- BELAN BAZAR, P.S.- KASIM BAZAR, DISTRICT- MUNGER

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR .... RESPONDENT/S

==========

Appearance:

For the Appellant/s : Mr. Ashok Kumar Jha, Advocate
Mr. Kumar Kamal Nayan, Advocate

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

==========

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 24-07-2017

Appellants, Amit Kumar, Anand Kumar and Shobha Devi have been found guilty for an offence punishable under Section 366A/34 of the IPC and each one has been directed to undergo R.I. for seven years as well as to pay fine appertaining to Rs.15,000/- in default thereof to undergo S.I. for three months, additionally vide judgment of conviction dated 24.09.2015 and order of sentence dated 29.09.2015 passed by Additional Sessions Judge, Vth, Munger in Sessions Trial No.11 of 2013.

2. PW.3, Ramendra Kumar Singh filed written report on

WEB COPY

the date of occurrence itself i.e. on 05.05.2012 disclosing therein that his daughter (name withheld, PW.4) while was studying at Verandah, Amit Kuamr, son of Anil Sah, who happens to be resident of same mohalla came at 09:00 AM along with his associate over a vehicle. He knocked the door. After opening the same by his daughter, they have kidnapped her and fled away. Soon after the occurrence, he had gone to the place of Amit Kumar and made query from his mother, brother and father, whereupon all began to abuse. He also received call from SIM No.7277789640 over his SIM No.8292050710 and a demand of rupees five lacs has been advanced with a further direction that in case of fulfillment demand of the aforesaid amount, the girl will be returned back contrary to it if the police is informed or his family members are anyway disturbed then, in that event, his daughter will be murdered. It has further been disclosed that victim happens to be a minor aged about 14 years and is a student of Class-IXth. It has also been disclosed that Amit Kumar has got criminal antecedent who has been involved in connection with possession of illegal firearms. Furthermore, it has also been disclosed that he suspect, hands of his mother brother Anand Kumar as well as Anil Sah, father which he gathered from there arrogant approach as, on query, they reacted and misbehaved with him.

3. After registeration of Kasim Bazar P.S. Case No.77/2012, the police swung into action by way of commencing

WEB COPY

investigation during course of which, victim was traced out, her statement was recorded under Section 164 Cr.P.C., was subject to medical examination and then, after completing investigation, charge sheet was submitted on the basis of which, trial commenced before the court of Sessions meeting with ultimate result subject matter of instant appeal.

4. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been admitted that the victim a major herself joined hands with the appellant Amit Kumar under the garb of their long standing love affair which she was free to exercise. In order to substantive the same, her signature over an affidavit has been made exhibited while her attention towards, three positive photographs have also been grown.

5. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW.1 is Ayush Ranjan Singh, PW.2 is Rekha Singh, PW.3 is Ramendra Kumar Singh, PW.4 Pragya, victim, PW.5 Saukat Alam, PW.6 Dadhichi Narain Bhardwaj, PW.7 Prem Prakash Naidu, PW.8 Mukesh Kumar and PW.9 Dr. Shubhra Verma as well as also exhibited Ext.1-Endorsement over written application, Ext.2 & 2/1-Signature over statement under Section 164 Cr.P.C., Ext.3- Injury report of Pragya

WEB COPY

Kuamr @ Mukku. Side by side the defence had exhibited Ext.A- Identified the signature over the affidavit, Ext.B- Identified the signature over the vakalatnama, Ext.C- Identified the signature over the attendance.

6. Learned counsel for the appellants has submitted that the finding recorded by the learned lower court happens to be bad in law as well as on facts hence is fit to be set aside.

7. In order to substantiate the same, it has been submitted that victim was major and that happens to be reason behind that prosecution malafidely suppressed the relevant document and to substantiate the same, referred the evidence of PW.9, doctor on the basis thereof, it has been submitted that though victim was examined by her but, there happens to be no disclosure with regard to age of the victim. In likewise manner, also drew attention towards the evidence of PW.7 an account out coming from Norte Dame School where, it has been alleged that victim PW.4 was reading, bringing the admission register wherefrom date of birth of victim has been shown as 07.07.1998 but the basis of recording thereof, has not been produced. That being so, the aforesaid entry relating to date of birth of victim could not be entertained. That being so, prosecution failed to prove by cogent as well as reliable evidence with regard to status of PW.4, victim to be minor.

WEB COPY

8. Being a major, the activity as is evident from the evidence of PW.4 speaks a lot much less, being a consenting party she remained, enjoyed, availed, relished company of the appellant Amit Kumar voluntarily without any coercion, threat, allurement and so, no offence under Section 366A of the IPC is made out against appellant Amit Kumar. With regard to remaining appellants namely Anand Kumar and Sobha Devi are concerned, it is apparent that they have got no involvement in the present episode as, when the informant had gone to their place, it is crystal clear that they were present at their house. When the evidence of PW.4, victim is taken together with the evidence of PW.3, the informant it is apparent that they have been victimized being the brother and mother of the Amit Kumar and so, are entitled for acquittal. In the facts and circumstances of the case, it has been submitted that prosecution failed to substantiate its case whereupon, the appeal is fit to be allowed.

9. The learned Additional Public Prosecutor has controverted the submission made on behalf of appellant. As submitted the victim happens to be minor and which is found duly supported with the school admission register wherein date of birth of victim has been as 07.07.1998, and the aforesaid entry happens to be much before the alleged date of occurrence whereupon its genuineness could not be doubted. That being so, the date of birth of

WEB COPY

victim being 07-07-1998 speaks her age as 14 years on the date of the occurrence and so, she was a minor. Apart from this, it has also been submitted that appellant Amit Kumar, during course of his statement under Section 313 of the Cr.P.C., had admitted company of victim PW.4 and further disclosed that in his opinion the age of the victim at that very time was approximately 18 years. Therefore, nothing more is needed to justify and concur with the finding arrived at by the learned lower court so far Amit Kumar is concerned. So far appellants Anand Kumar and Sobha Devi are concerned, the learned Additional Public Prosecutor fairly concedes that there happens to be no substantial legal evidence against them and so, they may be exonerated.

10. From the evidence of PW.4, victim which happens to be that of paramount consideration, it is apparent that she during her examination-in-chief had stated that while she was reading having her sitting at Verandah of her house there was knock over the door as a result of which she opened, found Amit Kumar who inquired about her father and no sooner than, caught hold her hand pulled, gagged thrown inside the vehicle and taken away. It was Ambassador vehicle. Inside the vehicle four persons were there including that of Anand Kumar, brother of appellant Amit Kumar. One lady was present by the side of the vehicle who was commanding to hurry up. Then thereafter, they proceeded towards Kasim Bazar. During midst

WEB COPY

thereof, Amit dialed her father and demanded rupees five lacs in lieu of her release. They shifted place to place during her captive. They used to mix sedative in the food as a result of which, she usually remained semiconscious during the intermediary period. On 22.05.2012 Amit had instructed her father to come along with money as daughter will be handed over but, police should not be informed. Then thereafter, Amit took her over vehicle and parked at company garden where, after sometime police came seeing whom, she raised alarm attracting them, Amit was apprehended. She was rescued. Before arrival of the police Amit got her signature over 3-4 blank papers as well as some format. Then thereafter, police took them to Kasim Bazar police station wherefrom she was taken to court where she made statement under Section 164 Cr.P.C. She was also medically examined. She identified the accused in dock.

11. During cross-examination at para-10 she had stated that she remained in company of accused for 10-12 days. During course of stay, she was taken hither and thither through vehicle. She is not remembering whether she had travelled on train that too, under AC Coach. She used to take food. Whole arrangement was being carried out by Amit. Whenever there was movement, her eyes were wrapped. She had not raised alarm while Amit used to go to natures call. She had not seen any other male or female during stay with Amit. Her eyes were always under cover. She used to hear their

WEB COPY

conversation. They were friends of Amit. She used to say Amit to carry her to her place. Then at para-11, there happens to be suggestion. When the aforesaid evidence is taken together with the statement recorded under Section 313 of the Cr.P.C., it is apparent that aforesaid event has been admitted at the end of the appellant Amit. At the present moment, Section 313(4) of the Cr.P.C. is to be taken note of which permits use of disclosure having made at the end of the accused during course of statement recorded under Section 313 of the Cr.P.C and that being so, the culpability of accused regarding commission of the occurrence, is found duly substantiated, however subject to finding over status of the victim.

12. In order to trace out the status of the victim, since initial version of the prosecution it is evident that victim, PW.4 has been identified to be minor aged about 14 years, a student of Class-IXth Notre Dame School and to that extent, the oral evidence of PW.2 and PW.3 happens to be. The victim PW.4 has not been cross-examined at the end of the appellant at least over that the age which she disclosed during course of recording of her evidence before the court as 15½ years was incorrect. PW.7 Prem Prakash Naidu, an employee of Notre Dame School who brought the admission register as directed the court and exhibited the same divulges the date of victim to be birth of 07.07.1998. The aforesaid recording happens to be much before the alleged date of occurrence and so, there happens

WEB COPY

to be no occasion for getting the entry manipulated nor suggested. At the present moment, givng a pause over the issue, contention of the learned counsel for the appellants is also to be considered in the background of evidence of PW.9, Doctor, Gynecologist who had not estimated nor disclosed the age of the victim. She rightly not deposed on that very score because of the fact that being a Gynecologist she was not at an expert relating to ossification test and that being so, had there been such activity, she would not be a competent witness on that very score. Therefore, coming to the conclusion on the status of the victim, it is found and held that victim happens to be minor on the alleged date and time of occurrence.

13. The learned lower court had convicted the appellant for an offence punishable under Section 366A/34 of the IPC. For better appreciation Section 366A of the IPC is quoted below:-

> "366A. Procuration of minor girl.--Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go FROM any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

14. From the evidence of the victim as, the remaining witnesses are not at all connected therewith did not divulge that she was kidnapped and during her captive she was ever forced or she

WEB COPY

compelled enter into an illicit intercourse with another person including that of Amit and on account thereof, the major ingredients prescribed for attracting Section 366A of the IPC is found lacking. Therefore, the conviction and sentence recorded against the appellants for the offence under Section 366A of the IPC is not at all found to be legal. Furthermore, with regard to demand of ransom as stated, allegation have not been found correct during course of investigation moreover, also not properly been substantiated nay, the charge stood therefor. Prosecution had not cared to proceed in that direction and if so, certainly would have proceeded after having charged framed against the appellants under Section 364A of the IPC nor the Investigating Officer, PW.8 had substantiated the same. No electronic evidence has been adduced at least in order to substantiate the call details having in between with regard to demand.

15. Now coming to the status of the appellants, it is apparent that presence of Sobha Devi as well as Anand Kumar has been brought up over screen in casual manner without satisfying their active role and so, in the facts and circumstances of the case, they are entitled for acquittal. That being so, judgment impugned relating to appellant Anand Kumar and Sobha Devi is set aside. Appeal to that extent is allowed. They are on bail hence they are discharge from liability.

WEB COPY

16. So far Amit Kumar is concerned, as has been observed above no offence under Section 366A of the IPC is made out considering the evidence of the victim, PW.4. However, the evidence of victim PW.4 a minor duly supports the activity of appellant Amit who on the alleged date and time of occurrence kidnapped her. Furthermore, the aforesaid event also been admitted by the appellant Amit but on the pretext of own volition being major which has been found completely tenebrous on account of conclusiveness of victim being minor. Consequent thereupon, finding of the learned lower court is modified from Section 366A to Section 363 of the IPC retaining the sentence so inflicted by the learned lower court. Consequent thereupon, instant appeal lacks merit concerning him and accordingly dismissed with the aforesaid modification. Appellant, Amit Kuamr is under custody hence is directed to serve out remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	27.07.2017
Transmission Date	27.07.2017

WEB COPY