

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 9 of 2017

Arising Out of PS. Case No.-44 Year-2012 Thana- Uchakagaon District- Gopalganj

The State of Bihar Through Collector, Gopalganj

... .. Appellant

Versus

Prem Chand Tiwari, son of Gorakh Tiwari, resident of village Nawada Prasauni, Police Station Uchakagaon, District – Gopalganj.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Satya Narayan Prasad

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5. 20-09-2017

I.A. No. 1174 of 2017

Heard Sri Satya Narayan Prasad, learned Addl. Public Prosecutor for the appellant/State on limitation petition i.e. I.A. No. 1174 of 2017, which has been filed for condoning delay of 39 days in filing appeal.

Considering the fact disclosed in the petition, the interlocutory application i.e. I.A. No. 1174 of 2017 is allowed and delay in filing appeal stands condoned.

Govt. Appeal (DB) No. 9 of 2017

Heard.

2. In this appeal, by order dated 28-06-2017, while directing for issuance of notice to sole respondent, this Court



had summoned lower court record, which has been received.

3. The appeal has been preferred against the judgment of acquittal dated 16-01-2017 passed in Sessions Trial No. 332 of 2012 (arising out of Uchkagaon P.S. Case No. 44 of 2012) registered for offence under Sections 363, 366A and 34 of the Indian Penal Code.

4. The sole respondent was put on trial on an accusation that he had kidnapped daughter of the informant. After registering F.I.R., the case was investigated and chargesheet was submitted. During investigation itself, the victim girl was recovered from the house of maternal uncle of the respondent and at the time of recovery, no complaint was made by the victim, rather it has come that the victim had stated that she had voluntarily ran with the respondent and she wanted to marry the respondent.

5. However, after investigation, chargesheet was submitted and respondent was put on trial and on 06-10-2012, charge under Sections 363, 366A of the Indian Penal Code was framed. Since, the respondent denied the charges, the prosecution, to prove the case, examined altogether 18 witnesses. Most of the witnesses have said, as if, they had heard about the offence, however; the informant tried to



develop a case that the victim from school was forcibly put in a vehicle by respondent alongwith two others. Though, as per the prosecution case, occurrence had taken place on 05-03-2012 at 9:30 AM, to the reasons best known to the prosecution, F.I.R. was got lodged on 12-03-2012 without any explanation regarding delay. During investigation, Babujan and Imamul Haque, who were examined as P.W.-3 and P.W.-4, were examined and their statement under Section 161 of the Cr.P.C. was got recorded. Both the witnesses i.e. P.W.-3 and 4 stated in their statement that the victim and respondent had voluntarily gone, since they were having love affair in between them. However, during their examination, Imamul Haque (P.W.-4) was declared hostile and P.W.-3 Babujan had given a different story and stated, as if regarding the occurrence, he had heard the same.

6. In the present case, one of the most important witness was the Principal of the school, where the victim was studying, namely Vijay Srivastava (P.W.-5). He had stated that he was informed by one of the teacher of the school that victim had voluntarily came out of the school and boarded in a Bolero vehicle and thereafter, she left the place. This witness immediately thereafter telephonically informed the



informant regarding the occurrence. On examination of the evidence of P.W.-5, it is evident that the manner of occurrence had taken place in a way, which was otherwise to the manner alleged in the F.I.R. Moreover, after the recovery of the victim, she was got medically examined and doctor had found that the victim was aged about 17-18 years. Meaning thereby that on the date of occurrence, the victim was major.

7. Considering the fact that the victim was major, the learned Trial Judge has rightly observed in the judgment that Section 366A of the Indian Penal Code is not applicable in the present case.

8. We have gone through the entire judgment, evidence as well as lower court record and after perusing the same, we are of the opinion that neither the learned Trial Judge has committed any error nor in the judgment impugned, there is perversity warranting interference.

9. Accordingly, the appeal stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

Anay

U		T	
---	--	---	--

