

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.134 of 2015

Arising Out of PS.Case No. -56 Year- 2009 Thana -AMARPUR District- BANKA

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**RITESH TANTI, S/O PAGLA TANTI RESIDENT OF VILLAGE SALAMPUR,
P.S. AMARPUR, DISTRICT BANKA.**

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

WITH

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Criminal Appeal (SJ) No. 185 of 2015

Arising Out of PS.Case No. -56 Year- 2009 Thana -AMARPUR District- BANKA

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1. CHHANGURI TANTI, SON OF LAXMAN TANTI
2. BINOD TANTI, SON OF LAXMAN TANTI.
**BOTH ARE RESIDENT OF VILLAGE- SALAMPUR, P.S -AMARPUR,
DISTRICT- BANKA.**

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

(In CR. APP (SJ) No.134 of 2015)

For the Appellant/s : Mr. Dhirendra Nath Jha, Adv.
Mr. Anil Kumar Singh, Adv.
Mr. Babab Roy, Amicus Curiae

For the State : Mrs. Abha Singh, APP
(In CR. APP (SJ) No.185 of 2015)

For the Appellant/s : Mr. Dhirendra Nath Jha, Adv.
Mr. Anil Kumar Singh, Adv.
Mr. Navin Kumar, Amicus Curiae

For the State : Mrs. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 24-01-2018

Because of the fact that there happens to be absence of learned counsel for the appellants, on account thereof, Sri Baban Rai, Amicus Curiae as well as Sri Navin Kuamr, Advocates have been requested to assit the court as an Amicus Curiae. Criminal Appeal (SJ) No.134 of 2015 wherein Ritesh Tanti is the appellant, Criminal Appeal (SJ) No. 185 of 2015 wherein Chhanguri Tanti and Binod Tanti are the appellants originate



against the common judgment of conviction dated 12.02.2015 and order of sentence dated 13.02.2015 passed by the Sixth Additional Sessions Judge, Banka in Session Trial No.1149 of 2011 convicting all the appellants for an offence punishable under Section 366A of the IPC and directing each one to suffer R.I. for seven years, have been heard together and are being decided by a common judgment.

2. Prakash Rai, PW.8 had filed written report on 27.02.2009 disclosing therein that he along with his wife Meera Devi had gone to attend marriage of Guddu Kumar, son of his cousin (Mausera) brother at Brahampur leaving behind his daughter Rekha Kumari aged about 14-15 years along with other family members. On 22.02.2009 his younger brother Pramod Rai telephonically informed with regard to missing of Rekha Kumari since 21.01.2009. He had further disclosed that Budho Devi wife of Binod Tanti took her away to her house on the pretext of some rituals at about 07:00 PM. When she did not return up to 09:00 PM then, he had gone to her place where, he came to know that Chhanguri Tanti, Binod Tanti, Ritesh Tanti took her away on a Maruti van. After getting such information, he rushed and came on 22.02.2009 and then gone to the place of Chhanguri Tanti and inquired from Budho Devi as well as Laxman Tanti whereupon they abused and became adamant to assault. During course of search, Diwakar Rai, Sharwan Rai, Pramod Rai and others have disclosed that they have seen the accused persons taking his daughter Rekha Devi away over Maruti Van.

3. After registration of Amarapur P.S. Case No.56/2009



investigation was taken up, victim was traced out and having presence of Laxman Tanti, Budho Tanti, Musho @ Shashi Bhushan Tanti on account thereof, keeping the investigation pending against these appellants/accused, charge sheet was submitted against them and on perusal of the record it is evident that separate trial bearing Session Trial No.640 of 2009 proceeded against them however outcome is not known. After apprehension of the appellants charge sheet has been submitted against them whereupon instant trial commenced proceeded and concluded in a manner, 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 also been suggested that alleged victim Rekha Devi was in love with Chhanguri Tanti and being major, they both married and that being so, no offence as alleged had ever been committed.

5. In order to substantiate its case prosecution had examined altogether eight PWs. PW.1-Bhama Devi, PW.2-Rukmini Devi, PW.3-Rekha Kumari, PW.4-Sharwan Ray, PW.5-Meera Devi, PW.6-Diwakar Ray, PW.7-Pramod Ray, PW.8-Prakash Ray. Prosecution had also exhibited Ext.1-Deposition of Investigating Officer relating to Session Trial No.640/2009 (bifurcated trial) Ext.2-C.C. of the FIR. As is evident, defence had not adduced either ocular or documentary evidence.

6. While challenging the finding of the learned lower court, the case of the appellants has been bifurcated in two parts. So far appellant Ritesh is concerned, it has been submitted that



victim PW.3 had not identified him in dock and that being so, his appeal is fit to be allowed setting aside the judgment of conviction and sentence recorded against him. With regard to appellant Chhanguri Tanti and Binod Tanti are concerned, it has been submitted that all the witnesses have been suggested with regard to continuing love affair in between Chhanguri Tanti and Rekha and in the aforesaid background, Rekha being major herself volunteered, joined company of the Chhanguri Tanti and that being so, the judgment of conviction and sentence recorded against them happens to be bad. Furthermore, it has also been submitted that informant PW.8 and her wife PW.5 Meera Devi are not an eyewitness to occurrence, they themselves were present at Budhian and so far remaining witnesses are concerned, they have not substantiated themselves to be reliable, creditworthy eyewitness whereupon, their evidences are fit to be disbelieved. Apart from this, it has also been submitted that Investigating Officer has not been examined. Though, the prosecution has exhibited deposition of Investigating Officer having recorded in separate trial but, the same would not serve the purpose because of the fact that aforesaid deposition was not recorded in present of appellants nor appellants have got opportunity to cross-examine him. Making document exhibit is different thing but its.

7. That being so, Ext.1 being in absence of appellant, would not get legality and so, non-examination of Investigating Officer has caused prejudice to the appellant. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be bad and is fit to be set aside.



8. On the other hand, learned Additional Public Prosecutor controverted the submission having made on behalf of the appellants and submitted that one has to show how he has been prejudiced on account of non-examination of a particular witness.

9. When the victim has been examined and she asserted that she was kidnapped, she was confined having absence of exaggeration as well as, having absence of contradiction in the evidence of the PWs, would not cause prejudice to the appellant and that being so, non-examination of the Investigating Officer could not be said to be fatal to the prosecution case by drawing an inference that the interest of appellants has been arbitrarily axed upon. With regard to merit of the case, it has been submitted that though PW.5 and PW.8 were not an eyewitness to occurrence but, the other witnesses who happen to be the family member have duly substantiated claiming themselves to be an eyewitness during course of kidnapping of the victim Rekha Devi on Maruti Van by the appellant and that being so, the judgment of conviction and sentence recorded by the learned lower court happens to be in accordance with law.

10. Before coming to merit of the case, first of all the ingredients of the Section is to be seen. From the lower court record, it is evident that appellants were prosecuted for an offence punishable under Section 36A/34 of the IPC as well as Section 504/34 of the IPC. Appellants have been convicted and sentenced for an offence punishable under Section 366A of the IPC. Section 366A reads as follows:



“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.”

11. In *Iqbal v. State of Kerala* reported in **2008 CR.L.J. 436**, it has been held:

“9. The residual question is of applicability of Section 366-A IPC. In order to attract Section 366-A IPC, essential ingredients are (1) that the accused induced a girl; (2) that the person induced was a girl under the age of eighteen years; (3) that the accused has induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse; (4) such intercourse must be with a person other than the accused; (5) that the inducement caused the girl to go from any place or to do any act.”

12. Now coming to the evidence, PW.3 is the victim she had stated that on 21.02.2009 at about 07:00 PM Budho Devi took her to house on the pretext that certificate of her school has been at her place. Considering that it might be an Admit Card, she accompanied where she was given sedative tea. Then, thereafter, Chhanguri Tanti, Ritesh Tanti, Binod Tanti, Musho Tanti, Barun Tanti lifted her in a car and took away. She became unconscious. She regained sense at Ludhiyana on 24.02.2009. She requested that she be taken back to her parents. Chhanguri Tanti remained in congruous police recovered her but after how many days she is not remembering. Chhanguri Tanti had not done any kind of lecherous activity with her. Identified the Chhanguri Tanti but had not claimed identification of Ritesh. With regard to remaining, he



was represented under Section 317 Cr.P.C. and so,, there was no question relating to identification. During cross-examination, at para-8 she had stated that at the time when Budho came to call her, her uncle Pramod, own brother were present. Her parents have gone to participate in a marriage ceremony of Guddu. In para-10 she had stated that at the time of arrival of Budho she was reading in a room. Her aunt was engaged in cooking, her brother was sleeping. In para-18 she had stated that she was taken away forcibly by Budho Yadav, but she had not protested nor raised alarm attracting her aunt to save. Then had stated that his uncle and aunt came in rescue, rescued and then took her away to their house. At para-16 she had stated that when she regained sense, she found herself at a house but she is unable to say whose house it was. In para-21 she denied the suggestion that she happens to be major and was in love with Chhanguri Tanti, got herself married with Chhanguri Tanti.

13. The remaining evidences adduced by PW.1 who happens to be cousin sister of the victim, PW.2 who happenst to be grand mother of the victim on the score of taking away the victim by Budhani as well as by the other accused persons over Maruti.

14. PW.4 who happens to be Pattidar, PW.6 is also a co-villager and PW.7 uncle of the victim the happens to be on that very score with some variance. But they are consistent over activity of the accused persons. Though, some sort of flaw is found during course of cross-examination of victim, but considering her status, being minor, as no cross-examination has been made by



the appellant to controvert the same, being minor, taking her away from the custody of lawful guardian is found duly substantiated. However, considering the evidence of the victim PW.3 whereunder she disowned to identify the Ritesh the benefit of doubt is given to the appellant Ritesh Tanti and that being so, the conviction and sentence recorded against him by the learned lower court is set aside. Appeal (Criminal Appeal (SJ) No.134 of 2015) is allowed. He is on bail hence discharged from its liability.

15. So far, status of appellants Chhanguri Tanti and Binod Tanti are concerned, it is manifest from the evidence available on the record, as referred above that it was mere kidnapping of a minor girl as, the prosecution had not substantiated that kidnapping was for compelling the victim to indulge in sexual activity with the others and that being so, in light of the principle decided by the Hon'ble Apex Court as referred hereinabove, the conviction and sentence recorded against these appellants for an offence punishable under Section 366A of the IPC is set aside and instead thereof, they are found guilty for an offence punishable under Section 363 of the IPC. In likewise manner, the sentence inflicted by the learned lower court is hereby reduced to, whereupon each of the appellants is directed to go R.I. for three years with a further direction that the period having undergone during course of trial would be subject to set off in terms of Section 428 of the Cr.P.C.

16. With the aforesaid modification, appeal (Criminal Appeal (SJ) No. 185 of 2015) is dismissed. Appellants Chhanguri Tanti and Binod Tanti are on bail hence their bail bonds are



hereby cancelled directing them to surrender before the learned lower court to serve out the remaining part of sentence within fortnight failing which the learned lower court will be at liberty to proceed against them, in accordance with law. First page and last page of the judgment should be handed over to Amicus Curiae for needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.01.2018
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