

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.229 of 2015

Arising Out of PS.Case No. -214 Year- 2011 Thana -LALIT NARAYAN UNIVERSITY District-
DARBHANGA

=====

Sita Ram Paswan, son of Sri Shiv Shankar Paswan, resident of Mohalla -
Sunderpur Bela, Police Station L.N.M.U., District - Darbhanga

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Girish Chandra Jha-Advocate
Mr. Govind Mohan Thakur-Advocate
For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 19-02-2018

Appellant Sita Ram Paswan has been found guilty for an offence punishable under Section 366 of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo R.I. for one year, additionally, under Section 354 of the I.P.C. and sentenced to undergo R.I. for one year, with a further direction to run the sentences concurrently vide judgment of conviction dated 01.04.2015 and order of sentence dated 02.04.2015 passed by the 1st Additional Sessions Judge, Darbhanga in Sessions Trial No.579 of 2012.

2. Name withheld (PW-3) gave her fard-bayan on 15.10.2011 at about 7.00 p.m. near Sunderpur Bira Four Lane alleging



inter alia that on the same day i.e. 15.10.2011 at about 11.00 a.m., she came to Darbhanga Tower to purchase some articles and during course thereof, Sita Ram Paswan, who happens to be nephew of Santosh Paswan (Ward Member) enticed her away over motorcycle to Siso Railway Station and began to gossip. During midst thereof, at about 4.00 p.m., he called two more persons by informing them over mobile and then, all of them continued in gossiping at the Siso Railway Station. She named one of them as Munna Yadav while she was unable to disclose identity of other one. When darkness fallen, then thereafter, all the three took her to a lonely place near railway crossing over N.H. Four Lane. After stopping of motorcycle, she got down from a motorcycle, which was being driven by Munna Yadav. Then thereafter, all the three forcibly tried to sit her, whereupon she protested as a result of which, all of them began to assault with fists and slaps and during course thereof, they also attempted to commit rape. On hue and cry raised by her, local inhabitants as well as police arrived seeing whom, all tried to escape and during midst thereof, Munna Yadav was apprehended while remaining succeeded.

3. On the basis of the aforesaid fard-bayan, L.N.M.U. P. S. Case No.214 of 2011 was registered followed with investigation and after completing the same, only appellant has been chargesheeted exonerating Munna Yadav as well as Bechan Singh, the third one and



on the basis thereof, appellant faced trial meeting with the ultimate result, the subject matter of instant appeal.

4. 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. However, neither any DW nor any kind of documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether five PWs, out of whom, PW-1, Jaibun Nisha, mother of the victim, PW-2, Md. Lukman, father of the victim, PW-3, victim herself, PW-4 Ranjan Kumar, I.O. and PW-5, Judicial Magistrate Ankur Kumar Gupta , who had recorded statement of the victim under Section 164 of the Cr.P.C. On the other hand, exhibited the documents as Exhibit-1, signature of informant over fard-bayan, Exhibit-2, signature of informant over statement recorded under Section 164 of the Cr.P.C., Exhibit-3, fard-bayan, Exhibit-4, seizure list, Exhibit-5, endorsement over fard-bayan, Exhibit-6, formal F.I.R., Exhibit-7, arrest memo, Exhibit-8, inculpatory extra-judicial confessional statement of accused, Exhibit-9, statement recorded under Section 164 of the Cr.P.C. As stated above, neither ocular nor documentary evidence has been adduced on behalf of defence.

6. It has been submitted on behalf of appellant that having been convicted for an offence punishable under Section 366 of



the I.P.C., the status of the victim is found major. That being so, the evidence of the victim in consonance with her conduct during course of alleged occurrence is to be seen in order to search out her willingness in availing company of appellant and others. In this regard, it has been submitted that from conduct of the victim, it is evident that victim was well conversant with the appellant and that happens to be reason behind that she was knowing the appellant, by her status to be nephew of Santosh Paswan, Ward Member. Furthermore, it is also evident that she on her own sat over motorcycle and gone to Siso Station. However, during course of evidence, tried to wrap her own conduct by stating that after gagging her mouth, she was forced to sit over the motorcycle. In this regard, it has been submitted that only presence of appellant was there at Darbhanga Tower Chowk. So, had there been such kind of activity, then in that event, victim would have raised alarm. Not only this, being alone, the appellant was not in a position to overpower her at a crowded place where, apart from public, police personnel were present, took the victim over motorcycle through busiest lane, road having presence of police, police station without having any kind of obstruction at the end of the victim even though appellant was not at all armed with deadly weapon. In likewise manner, it has also been submitted that at Station, there happens to be presence of Station Master and other



railway staffs managing the station, passengers, but allowing herself that too, right from 11.00 a.m. to evening hour without any protest is another circumstance, which suggest inclination of the victim as well as presence of intimate relationship since before. Furthermore, it has also been submitted that had there been presence of three persons without any due acknowledgement would not have allowed their intervention, would not have allowed herself to sit behind Munna Yadav over a motorcycle having no coercion or threat and so, in the aforesaid facts and circumstances of the case, could not be considered it a case of kidnapping and in likewise manner, attempt to outrage the modesty of the victim, as she had not complained, save and except that there was grappling.

7. Apart from this, manner whereunder victim had shifted her evidence stage by stage is another circumstance to suggest that she was not at all reliable witness and the cumulative effect thereof, coupled with the evidence of PW-1, mother and PW-2, father corroborated by PW-4, I.O., did not justify the finding recorded by the learned lower Court and as such, is fit to be set aside.

8. On the other hand, learned Additional Public Prosecutor while refuting the submission made on behalf of learned counsel for the appellant has submitted that though from the evidence available on the record, no offence under Section 366 of the I.P.c. is



found duly substantiated, but the finding relating to Section 354 of the I.P.C. is found duly substantiated and that being so, the conviction and sentence having been recorded against appellant for an offence punishable under Section 354 of the I.P.c. is fit to be confirmed.

9. Admittedly, PW-1 and PW-2, parents of the victim were not an eye witness to occurrence. Whatever they deposed, happens to be on the basis information having been furnished by the victim (PW-3) herself. Though aforesaid information is found admissible in accordance with Section 6 of the Evidence Act falling under principle of res gestae, but what they deposed in Court happens to be inconsistent with their earlier statement as has been found from the evidence of PW-4 (I.O.), Para not disclosed (as Page-10 of the deposition) wherefrom, it is evident that at an initial stage, they have not supported the occurrence rather they have disclosed that victim happens to be possessing some sort of dubious character and in the aforesaid background, she was married, but she declined to reside with her husband. She was living wayward life and during course thereof, she developed intimacy with the appellant Sita Ram Paswan and was saying that she will remain with him. Under the aforesaid facts, whatever been deposed at their end during course of trial will go out of purview of Section 6 of the Evidence Act.

10. Before scrutinizing the evidence of the victim (PW-



3), the evidence of PW-5, the Magistrate is to be seen, who had recorded statement under Section 164 of the Cr.P.C. of the victim and same happens to be Exhibit-9 of the record. When the aforesaid statement is taken together with the deposition of PW-3, it is evident that there happens to be variance. Though attention of the victim has not been drawn up on that very score, but the fact remains on account of exhibit of the record.

11. Now, coming to the evidence of the victim, she had not claimed to be a minor at the time of occurrence. Therefore, her evidence coupled with her conduct is to be perceived in the aforesaid background. She had stated that on the alleged date of occurrence at about 11.30 a.m., she proceeded from her house to Tower Chowk in order to purchase articles for shop as well as household article, where Sita Ram Paswan arrived. Sita Ram Paswan caught hold her hand, gagged her mouth and then, took her away over motorcycle to Siso Railway Station. At Siso Railway Station, they remained, during midst thereof, Sita Ram Paswan phoned and called two more boys. Then thereafter, Sita Ram Paswan along with aforesaid two boys took her beneath a bridge over National Highway. She had named Munna Yadav as amongst the aforesaid two boys while she failed to disclose identity with regard to third one. Beneath Bridge, Sita Ram Paswan intended to misbehave, whereupon she raised alarm attracting the



local as well as police. Seeing the police, Sita Ram Paswan along with one unknown fled away while Munna Yadav was caught hold. Her statement was recorded by the police, whereupon she has put her signature (exhibited), she also put her signature over the statement recorded under Section 164 of the Cr.P.C. During cross-examination at Para-5, she has stated that she met with Sita Ram Paswan for the first time at Tower Chowk. He directed to sit over motorcycle, whereupon she sat. Sita Ram took her to Siso Railway Station and during midst thereof, she had crossed the crowded area, two police stations as well s other places having presence of police. She was instructed to sit at Siso Railway Station and then, Sita Ram Paswan gone away outside station to take beetle. At the evening hour, Munna Yadav took her from Siso Railway Station towards National Highway. Munna Yadav took her beneath bridge over National Highway. In Para-6, she had stated that she was possessing cash appertaining to Rs.5,000/- for purchasing of the articles which Munna Yadav and Sita Ram Paswan tried to snatch and during course thereof, there was push and pull. Police arrived and Munna Yadav was apprehended. Nothing more was done at the end of the accused.

12. PW-4 is the I.O., who had substantiated the case of the prosecution to the effect that during course of patrolling, they heard sound of a girl, whereupon they had gone there, two managed to



escape while one culprit was apprehended, victim was rescued. Thereafter, her statement was recorded. Her parents came and on an undertaking, they took away the victim. On the following day, she was medically examined. Her statement under Section 164 of the Cr.P.C. was recorded, accused persons were apprehended and during midst thereof, he recorded inculpatory extra-judicial confessional statement of Sita Ram Paswan and then, submitted chargesheet exonerating Munna Yadav as well as Bechan Singh. During cross-examination, there happens to be exposure with regard to previous statement of PW-1 and PW-2 as well as some sort of activity at his end during course of investigation.

13. PW-5 as stated above, happens to be the Magistrate, who had recorded statement of the victim under Section 164 of the Cr.P.C.

14. After scrutinizing evidences available on the record, it is apparent that had there been some sort of illegal activity or the parties were not known since before, then in that circumstance, if the initial version is accepted, then PW-3, victim would not have allowed herself to be pillion rider and if her evidence is accepted, then would not have allowed Sita Ram Paswan to forcibly get her down to sit as a pillion rider as her hands were caught hold by Sita Ram Paswan as well as her mouth were also gagged. Being pillion rider,



there was every opportunity available to her to raise alarm regarding the misfortune, if so, which she faced or going to be faced on account of illegal activity of Sita Ram Paswan, but sat idle and gone to the Siso Railway Station without any resistance although she was never put under threat or fear. Apart from this, had there been no previous acquaintance, then in that circumstance, victim would not be in a position to identify the appellant by name as well as his proper identify. There happens to be her own admission that Sita Ram Paswan left her at Siso Railway Station and gone to take beetle outside station. Had there been kidnapping against her will, then in that circumstance, she would have slipped there from or at least contacted station master or anybody else, would have raised alarm attracting the passengers. Apart from this, she remained for hours together in same posture speaks otherwise and the aforesaid theme has not been considered properly by the learned lower Court. With regard to other activity, she had not shown Rs.5,000/- to the police, which she was carrying to purchase the goods for his shop. Furthermore, whatever been stated by her during course of her examination-in-chief, has completely been ruined during course of cross-examination and in the aforesaid background, identifying the appellant even for outraging her modesty is not at all found duly substantiated when her activity is taken together under the guise of evidence of PW-1 and



PW-2, her parents.

15. Consequent thereupon, the judgment of conviction and sentence impugned is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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