

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.336 of 2015**

Arising Out of PS.Case No. -48 Year- 2013 Thana -NAWADA District- NAWADA

=====

1. Ranjan Kumar Son Sanjay Mistry Resident of Village : Pasrahi (Pasadhi), P.S. : Meskaur, District : Nawadah.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Adya Singh, Adv.
Mr. Arjun Prasad, Adv.

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

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 21-03-2018**

Appellant, Ranjan Kumar has been convicted for an offence punishable under Section 366A IPC vide judgment of conviction dated 04.05.2015 by the Additional Sessions Judge-4th, Nawada in Sessions Trial No. 03/2014/163/2014 and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 3000/- in default thereof, to undergo SI for two months additionally, vide order of sentence dated 11.05.2015.

2. PW-2, Manoj Kumar Singh filed a Complaint Petition No. 13/2013 on 24.01.2013 disclosing therein that his daughter (name withheld) aged about 15 years, while had gone to Coaching Institute on 21.01.2013 at about 7.00 AM, did not return. His daughter happens to be student of Class-X in Project Kanya High School, Nawada and her age happens to be 15 years. They had gone in



search but being frustrated gave information to the police on 22.01.2013. Even thereafter, they continued searching his daughter and during course thereof, they came to know that Ranjan Kumar who was one of the tenants residing in his Mohalla, had enticed away his daughter and on account thereof, he gave written information to the Superintendent of Police as well as Officer Incharge through postal process but in vain. They had also gone to the place of Ranjan where all the family members were found absent. They also came across a news that the brother of Ranjan, namely, Pankaj Kumar was also indulged in such kind of activity since before.

3. The aforesaid complaint petition was sent to the PS concerned for registration and investigation whereupon, Nawada PS Case No. 48/2013 was registered and during midst thereof, as is evident the victim was traced out who was medically examined, her statement under Section 164 CrPC was recorded, other witnesses were examined and then thereafter, concluding investigation submitted charge-sheet facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. 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. However, neither oral nor documentary evidence has been adduced in defence.



5. In order to substantiate its case, prosecution had examined altogether 5 PWs who are PW-1, Reshmi Devi, mother of victim, PW-2, Manoj Kumar Singh, Informant/father of the victim, PW-3, Victim herself, PW-4, Dr. Sudha Kumari, PW-5, Dr. Prabhakar Singh. Side by side had also exhibited Ext-1, signature of PW-2 over complaint petition, Ext-2, signature of victim over statement recorded under Section 164 CrPC, Ext-3, Medical Report, Ext-3/1, Signature of PW-5 over medical report. As stated above, neither oral nor documentary evidence has been adduced in defence.

6. From the evidence available on record it is evident that case was compromised amongst the parties as is evident from the evidence of PW-3, victim herself and under the garb of compromise, all the witnesses have not supported the case of the prosecution. PW-1, mother disowned to have any kind of knowledge regarding occurrence while PW-2, informant had not insisted upon with regard to status of the victim to be minor and further during cross-examination at para-4 had stated that his daughter was not kidnapped. PW-3, the victim had stated during his examination-in-chief that she had on her own gone along with Ranjan to Gujarat where she stayed for six months and then thereafter both of them returned to Nawada. Police took her to court where her statement under Section 164 CrPC was recorded. She was also medically



examined. During cross-examination, she had at para-5, disclosed that she on her own had joined the company of Ranjan. She was never kidnapped. She had further stated under para-6 that whatever been stated by her during course of statement under Section 164 CrPC never occurred to her rather at the instant of police, she had stated like so. PWs-4 and 5 are the members of Medical Board who had examined the victim and had found hymen old ruptured. Side by side had also estimated the age of the victim in between 17 to 19 years.

7. Considering the variance of age plus minus two years, acceptance thereof, having inclination toward upper age, that being so, the victim happens to be certainly major one and that being so, considering the nature of the evidence as discussed above, the judgment of conviction and sentence is found non maintainable. The sam is set aside. Appeal is allowed.

8. Since appellant is on bail, he is discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.03.2018
Transmission Date	23.03.2018

