

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.77 of 2016

Arising Out of PS. Case No.-416 Year-2012 Thana- PURNEA SADAR District- Purnia

Govind Sharma @ Govind Kumar Sharma Son of Dilip Sharma resident of
Chandan Nagar Chowk, Gulab bagh, P.S.- Sadar, District- Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant : Mr. Raj Kumar, Advocate.

For the Respondent : Ms. Abha Singh(APP)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-03-2018

Heard the learned counsels for the appellant and the

State.

2. The appellant/Govind Sharma has been convicted under Sections 363 and 366A of the Indian Penal Code and has been sentenced to undergo R.I. for seven years, fine of Rs. 5000/- and in default of payment of fine, further imprisonment for six months for each of the offences by judgment and order dated 22.01.2016 passed by the learned 4th Additional District Judge, Purnea in Sessions Trial No. 20 of 2013/440 of 2015 (arising out of Sadar P.S. Case No. 416 of 2012).



3. The appellant was charged for the offence under Section 376 of the IPC also along with Sections 363 and 366A of the IPC but the trial court has acquitted him of the charge under Section 376 of the Indian Penal Code.

4. The facts and circumstances giving rise to the present appeal are as follows:

Paras Sah (P.W. 5) who is the father of the victim girl lodged the FIR on 18.10.2012 alleging that his daughter Kiran Kumari aged 14 years was kidnapped by the appellant and two others on 03.10.2012, when she had come out of the house to go to her school situated in Gulab Bagh in the district of Purnea. It has been stated by him that when his daughter did not return from school, he went in search of her to her school and there he learnt that the appellant and two others had taken his daughter on a motorcycle to the over bridge from where she was made to board a car and was taken to some unknown destination. After having learnt the aforesaid fact, he claims to have gone to the house of the appellant for



requesting him to return his daughter but the family members of the appellant told him that whenever his daughter would come, she would be sent to his house. Thereafter, he has alleged that the family members of the appellant threw him out of the house. It was therefore, suspected by P.W. 5 that his daughter has been enticed away for the purposes of marriage.

5. On the basis of the aforesaid written report, a case vide Purnea (Sadar) P.S. Case No. 416 of 2012 dated 18.10.2012 was registered for investigation for the offence under Sections 363 and 366A of the Indian Penal Code.

6. The police, after investigation, submitted charge sheet under Sections 366A, 363, 120B and 376 of the Indian Penal Code, upon which cognizance was taken and the case was committed to the court of Sessions for trial.

7. The trial court, after having examined eight witnesses on behalf of the prosecution and none on



behalf of defence, convicted and sentenced the appellant as aforesaid.

8. For not having found cogent and reliable evidence regarding the offence of rape which was saddled on the appellant, he was acquitted of that charge.

9. Paras Sah (P.W. 5) in his trial, supported his initial prosecution version but stated that his daughter came back after about 20-22 days and this information was provided to him by the police. At the police station, he was told by his daughter that the appellant had subjected her to sexual intercourse for about ten days at Hyderabad. She had also told him that she had been taken to Majheli and from there to Katihar and lastly to Hyderabad via Barsoi. In his cross-examination, he has stated that he could learn about the kidnapping of his daughter on 03.10.2012 from some of the students of the school in which his daughter studied. However he did not know the names of those students. He has also stated that on the same day he had given a written report in the



police station which had been scripted by a clerk in the police station. However in his cross-examination, he has admitted that before the police, he did not state that the victim/daughter had told him that she was subjected to rape at Hyderabad. He had also not informed the investigating officer that the arrival of his daughter was made known to him by the local police. With respect to the age of the victim, P.W. 5 mentioned, as in his written report, that his daughter was 14 years of age at the time of the occurrence.

10. In this context, it would be relevant to go through the deposition of the victim who has been examined as P.W. 7. She has narrated before the trial court that about two years ago, at about 9 o' clock in the morning, she was present in her school and at the time of dismissal of school at 4 P.M., the appellant and two others offered to reach her home. She declined in the first instance, but was forcibly made to sit in a red coloured Sumo vehicle and was brought to Kaliganj. She has alleged to have been



kept at Kaliganj in a house whereafter at about 10 o' clock in the night, she was taken to Manjheli and from there to Katihar. She was thereafter taken to Bengal. The total travelling time was four days. She was taken to the house of the brother of the appellant where the appellant asked her to marry him. When her parents lodged a case against the appellant, then two associates of the appellants viz. Hareram Sahni and Rajesh Rajak brought her back and left her at the local police station at Purnea. She was put to medical examination two days later and on her asking, she was made to go to her parents. She also claims to have given her statement under Section 164 of the Code of Criminal Procedure before a judicial officer.

11. From the records, it appears that though, P.W. 7 has alleged that she was subjected to rape at Hyderabad by the appellant in her 164 statement, but she has not whispered even a word with respect to her having been raped by the appellant in her deposition before the trial court.



12. The trial court, taking into account that admittedly P.W. 7 had been taken to the house of the appellant in Hyderabad where he lived with his family and that the P.W. 7 (victim) had plenty of opportunities of complaining against the act of the appellant but she did not ever raise any objection to her being transported from one place to other, found the allegation of rape to be absolutely uncorroborated and unsubstantiated. Apart from this, the trial court also took into account that if the victim was 14 years of age and had she been subjected to rape, this ought to have been reflected in the medical examination; but the doctor who examined the victim did not find any injury on the person of the victim to suggest any sexual encounter in the past. Her age also assessed by doctor to be between 18 and 19 years. Thus, the appellant was acquitted of the charge under Section 376 of the Indian Penal Code.

13. Learned counsel for the appellant has submitted that if the evidence with respect to the allegation of rape



could not be substantiated, it was under no circumstance that he could have been convicted under Section 366A of the Indian Penal Code.

14. Section 366A of the Indian Penal Code reads as follows:

366-A. 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.

For attracting the mischief of Section 366A, the following ingredients have to be satisfied; there has to be an inducement/enticement of a minor girl under the age of 18 years; She must be taken from one place to another; and the intention of taking her away should be to do any act with the 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. Only then can the offence under the aforesaid Section of the IPC can be said to be completed and the person punished for such offence.

15. The victim (P.W. 7) has not spoken about her being subjected to sexual intercourse. What was stated by her is that the appellant had asked her once to marry him. Beyond that, no intention can be gathered from the evidence available on record suggesting that the victim/P.W. 7 was taken to Hyderabad with the intent or with the knowledge that she will be forced or seduced to illicit intercourse with another person or with the appellant. Thus no offence under Section 366A of the IPC can at all be said to have been made out.

16. This proposition is further supported by the fact that two of the witnesses who are the co-villagers of the father of the victim and who have been examined as P. Ws. 1 and 2 at the trial have only stated that the appellant had taken her to Hyderabad. They have not



attributed any motive or purpose behind the same. If the purpose was to kidnap for immoral purposes, punishable under Section 366A of the IPC, P. W. 5 would not have waited for so many days to lodge the FIR and P. Ws. 1 and 2 being co-villagers would have known that and would have then deposed before the trial court accordingly. That not having been done, there exists no corroboration of any intention of the appellant regarding taking the victim away from the lawful guardianship of her parents for subjecting her to any illicit/immoral purpose.

17. P. W. 5 (father of the victim) has, in his written report, stated the age of his daughter as 14 years. The victim herself in her 164 statement has also stated that she is 14 years old and is a student of standard IX. The Judicial Magistrate who recorded the statement of the victim under Section 164 Cr.P.C. has also assessed the age of the victim between 14-15 years. As opposed to the aforesaid statements regarding the age of the victim, the



doctor (P.W. 6) who had examined the victim, has assessed the age of the victim as one between 18-19 years. The assessment of the doctor about the age of the victim is only on the basis of physical examination of the victim as well as the radiological examination reports. This can only be a rough assessment and the trial court was not unjustified in holding that the victim, in any condition was less than 18 years of age at the time of the occurrence. In her statement under Section 164 Cr.P.C. before the learned Judicial Magistrate as also in her deposition before the trial court, the victim has spoken about her having been taken away from the school forcibly by the appellant and two others. She was initially told that she would be taken to her home but was made to go to other places and ultimately at Hyderabad from where she came to the police station with the two associates of the appellant. Whether she had gone with the appellant voluntarily or not is not the question for this Court to consider. If she is found to be a minor i.e.



below the age of 18 years, she could not have been taken away from the lawful guardianship of her parents. The offence of her having been taken away from the lawful guardianship of her parents is fully established by the deposition of P.W. 4 who is the mother of the victim, P.W. 5 (informant/father of the victim) and the informant herself, thus making the appellant liable for being convicted for the offence under Section 363 of the IPC.

19. Thus this Court finds that there is no justification for convicting the appellant under Section 366A of the IPC. He is therefore acquitted of the charge under Section 366A of the IPC. However his conviction under Section 363 is affirmed and upheld.

20. However, looking at the circumstances of the case, especially that the appellant has faced the trial, did not subject the victim to sexual intercourse, allowed the victim to come back to Purnea with his two associates as also the fact that the victim now is a married person, (as deposed by one of the witnesses) this Court is of the view



that interest of justice would be satisfied and fulfilled if the sentence imposed on the appellant for Section 363 of the IPC be reduced to the period of custody which he has already undergone.

21. Learned counsel for the appellant has informed this Court that the appellant has remained in jail since 26.10.2012 i.e. for about more than five years.

22. The sentence of the appellant under Section 363 of the IPC is modified to the period of custody which he has already undergone.

23. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

24. A copy of the judgment be transmitted to the Superintendent of jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26/03/2018
Transmission Date	26/03/2018

