

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.349 of 2015

Arising Out of PS.Case No. -33 Year- 2011 Thana -SHIWAPATHI District- MUZAFFARPUR

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Md. Manjoor Ansari @ Manjur Alam, S/o Md. Mohfiz Ansari, resident of Village-Harhiya, P.S.- Siwaipatti, District- Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Diwakar Prasad Karn-Advocate
Mr. Chandra Shekhar Anand-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 08-03-2018

Appellant Md. Manjoor Ansari @ Manjur Alam has been found guilty for an offence punishable under Section 366 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo S.I. for two years, additionally, under Section 376 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo S.I. for two years, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 20.03.2015 and order of sentence dated 26.03.2015 passed by the 11th Additional Sessions Judge, Muzaffarpur in Sessions Trial No.223 of 2013.

2. PW-2 Chandeshwar Giri filed written report on



19.04.2011, alleging inter alia that his daughter Rani Devi used to visit Md. Manjoor Ansari for getting training of tailoring. On 05.03.2011 at about 10.00 a.m., she had gone to the place of Manjoor, but did not return, whereupon he had gone to search. He found house of Manjoor locked. All the family members were absent. On query made from the neighbours, he came to know that with the assistance of Mohfiz Ansari, Saimun Khatoon, Samina Khatoon, Amisha Khatoon, Manjoor enticed away his daughter. When he returned back, he got an information from Mobile No.9504350774, disclosing the fact that girl happens to be in his custody.

3. After registration of the Siwaipatti P. S. Case No.33 of 2011, investigation commenced and during course thereof, as is evident, victim was recovered, was examined under Section 164 of the Cr.P.C., was medically examined and after collecting other materials, chargesheet was submitted, whereupon trial commenced and concluded in a manner, 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 oral nor documentary evidence has been adduced in defence.

5. Four witnesses have been examined on behalf of prosecution in support of its case being PW-1, Uma Shankar Giri,



brother of the victim, PW-2, Chandeshwar Giri, informant, father of the victim, PW-3, Dr. Shobha Rani Singh, who had examined the victim and PW-4, Reshma Verma, the Magistrate, who recorded statement of the victim under Section 164 Cr.P.C. Side by side, prosecution had also exhibited as Exhibit-1, written report, Exhibit-2 series, medical report, Exhibit-3, statement recorded under Section 164 of the Cr.P.C. along with signature of PW-4 and Exhibit-3/1, signature of the victim over the statement recorded under Section 164 of the Cr.P.C. As stated above, neither ocular nor documentary evidence has been adduced on behalf of prosecution.

6. From perusal of the record, it is apparent that I.O. has not been examined. No explanation is there on behalf of prosecution with regard thereto. It is further evident that victim has also not been examined and for that, from the evidence of PW-2, it is evident that she was not examined on account of her death. Before coming to the ocular evidence, it is apparent from the medical evidence that though PW-3 had found hymen old ruptured, vagina admitting two fingers, but she had not opined whether recently she was subjected to sexual activity. Otherwise, the aforesaid medical report lost its force in the background of the fact that victim was married since before. It is also evident from the judgment impugned that learned lower Court had put much stress over statement of the victim recorded under Section 164



of the Cr.P.C. in the background of examination of PW-4, the Magistrate, who had recorded statement under Section 164 of the Cr.P.C. It is needless to say that the statement recorded under Section 164 Cr.P.C. is not in substantial piece of evidence and that being so, it has got no identity in the eye of law. Its sole purpose happens to be subject to corroboration or contradiction.

7. Now, coming to ocular evidence, it is evident that during course of examination-in-chief, PW-1 as well as PW-2 had substantiated the case of the prosecution to the effect that victim Rani Devi was kidnapped by the accused Md. Manjoor Ansari @ Manjur Alam while Rani was on visiting term for getting training of tailoring and further, she was sexually exploited while was under custody of the appellant, but during course of cross-examination, PW-1 at Para-3 had stated that his sister returned back after sometime. His sister had not disclosed regarding the occurrence. He for the first time, is deposing before the Court. He had not made statement before the police while PW-2 during course of cross-examination at Para-2 had stated that he had not seen his daughter going to the place of Manjoor Ansari. He had further stated that when his daughter returned back, she had not disclosed anything to him. Then had stated that as he had instituted case against the family members including Manjoor Ansari, so out of fear they escaped. He had further stated that one and half



month after the occurrence at the instance of some persons, he instituted the case. In Para-3, he had stated that later on, he came to know that Manjoor had not committed any offence rather he fled away out of fear, on account of institution of the case.

8. Considering such kind of sketchy evidence so adduced on behalf of prosecution coupled with existing deficiency as the statement under Section 164 Cr.P.C. could not be a ground to record conviction, did not justify the finding recorded by the learned lower Court. Consequent thereupon, judgment impugned is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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