

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.169 of 2015

Arising Out of PS.Case No. -526 Year- 2006 Thana -SASARAM NAGAR District- SASARAM
(ROHTAS)

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Sardar Santosh Singh, son of Yogendra Singh, resident of Village-Spulahganj,
P.S - Sasaram, District - Rohtas (Bihar).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Srivastava-Advocate
Mr. Bir Singh-Advocate
Mr. Rajnigandha-Advocate
Mr. Govind Kumar Jha-Advocate
For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 05-01-2018

Appellant Sardar Santosh Singh has been found guilty for an offence punishable under Section 366A of the I.P.C. and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for one month, additionally, vide judgment of conviction dated 19.02.2015 and order of sentence dated 20.02.2015 (though there happens to be some sort of mistake with regard to date) passed by the Additional Sessions Judge-5th, Rohtas at Sasaram in Sessions Trial No.263 of 2008.

2. Gopal Chaudhary (PW-4) filed written report on 19.11.2006 alleging inter alia that on 17.11.2006, after Tiffin hour



while his daughters Mamta Kumari aged about 13 years (victim), Vijeta Kumari aged about 12 years and Ragini Kumari aged about 10 years were going to their School “Guru Mukhi Madhya Vidhalaya”, Lakhnusrari, he was informed by his daughter Vijeta Kumari at 2.00 p.m. and divulged that Sardar Santosh Singh enticed away Mamta Kumari. After having been informed, he rushed to search out his daughter and for that, moved in different direction. Even gone to the place of Sardar Yogendra Singh, father of Sardar Santosh Singh, whom he narrated the incident, whereupon he assured that he will anyhow procure her presence tomorrow. On 18.11.2006, on meeting, he again assured that girl will be handed over to him on 19.11.2006. Today, when he along with his friends has gone to the place of Sardar Yogendra Singh, they have said that take whatever action he chooses. They have got no concern. So, he suspected that his daughter has been enticed away with an ulterior motive by Sardar Santosh Singh and for that whole family has hatched a conspiracy. It has also been disclosed that his daughter has taken away ornaments of her mother as well as cash.

3. After registration of Sasaram Town P.S. Case No.526 of 2006, investigation commenced and after completing the same, chargesheet has been submitted only against Sardar Santosh Singh (appellant) as well as Rani Ranjan Kumari, his sister, on the



basis of which, trial commenced and concluded in a manner, subject matter of instant appeal. It is also evident from the record that trial of Rani Ranjan Kumari was separated and sent to Juvenile Justice Board as she was found to be Juvenile.

4. Defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has alternatively been pleaded that victim was in love with the appellant and on account thereof, she herself volunteered without having any sort of activity at his end and to support the same, the love letters have also been exhibited as Exhibit-A and Exhibit-A/1, A/2 including examination of one DW.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1 Janki Devi, PW-2 Sushil Kumari Soni, PW-3 Mamta Kumari (victim), PW-4 Gopal Chaudhary, informant, PW-5 Vijeta Kumari, sister, PW-6 Ragni Kumari, another sister and PW-7 Laxman Rai, I.O. Side by side, had also exhibited the document viz. Exhibit-1, written report, Exhibit-2, endorsement over the written report and Exhibit-3, Para-1 to 81 of the case diary. As stated above, defence had also examined one DW namely DW-1 Nand Kishore Prasad, formal in nature as well as had also exhibited love letters allegedly written by victim as Exhibit-A, A/1, A/2.



6. It has been submitted on behalf of learned counsel for the appellant that though appellant has been found guilty for an offence punishable under Section 366A of the I.P.C., but from the facts of the case, it is evident that same is found non-sustainable. To substantiate the same, it has been submitted that had the victim not volunteered herself to accompany, then in that event, there was no occasion for her to have ornaments of her mother along with her and in likewise manner, cash. Furthermore, it has also been submitted that neither victim was enticed away by the appellant nor was kept by the appellant, which is evident from the fact of the case itself, more particularly from the evidence of the victim herself and that being so, there happens to be no question of keeping the victim under captive by the appellant. Apart from this, it has also been submitted that no ingredients of Section 366A of the I.P.C. is found duly substantiated at the end of the prosecution and that being so, the conviction and sentence recorded by the learned lower Court is found non-sustainable in the eye of law, whereupon the judgment impugned is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor while controverting the submission made on behalf of appellant has submitted that victim had categorically stated that she was taken away by the appellant along with his sister to Varanasi and



from there, she was taken away by the appellant to Delhi. Even for a moment, assuming that victim was a consenting party being minor, her consent has got no recognition in the eye of law and that being so, learned lower Court has rightly recorded the conviction and sentence against the appellant.

8. Before coming to deal with the material available on record, it looks pertinent to have a glance over Section 366A of the I.P.C., which 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.”

From plain reading of the Section, it is evident that kidnapping/ abduction of a minor should be for the purpose of forcing or seducing her to have intercourse with another person than the person, who has kidnapped. After going through the evidence, all the PWs including victim, it is crystal clear that no such type of allegation has been attributed at their end and that being so, conviction would not be justifiable. Furthermore, the Hon’ble Apex Court has held in a decision reported in *Iqbal v. State of Kerala reported in 2008 CRI.L.J. 436:-*



“10. In the instant case, the admitted case of the prosecution is that girl had left in the company of the accused of her own will and that she was not forced to sexual intercourse with any person other than the accused. The admitted case is that she had sexual intercourse with the accused for which, considering her age, conviction under [Section 376](#) IPC has been maintained. Since the essential ingredient that the intercourse must be with a person other than the accused has not been established, [Section 366A](#) has no application.”

9. Being deficient on that very score, the conviction under Section 366A of the I.P.C. is not at all found legally entertainable, whereupon would not survive. Now, coming to other aspect, whether victim was kidnapped/ abducted by the appellant, there happens to be inconsistent version with regard to presence of appellant at an initial stage as is evident from the evidence of the victim (PW-3) in consonance with her sisters PW-5 Vijeta Kumari as well as PW-6 Ragini Kumari. PW-3, victim, had said that Rani Ranjan Kumari, who was standing since before during midst of way called her, talked with her and then, took her in a Maruti Car where Sardar Santosh Singh was sitting since before while PW-5 and PW-6 have stated that during course of going to school, they met with Sardar Santosh and Rani Ranjan Kumari and during course thereof,



they took away the victim. Apart from this, when the evidence of Pw-3, victim, has been minutely gone through from Para-7 of her cross-examination, it is evident that while she was staying at Gurudwara at Delhi, she was residing at a place allotted to the female devotees. No male was allowed to have access. Had there been any kind of activity adverse to her interest, then in that circumstance, instead of staying and enjoying company of other devotees, relishing the food provided by the Langar for days together, she would have escaped there from or would have informed her father whom, she had telephonically informed after so many days. The subsequent conduct as is evident from the evidence of PW-7, I.O. under Para-7, it is evident that neither victim herself nor her father had produced the victim at least for the purpose of her statement under Section 164 of the Cr.P.C. and in likewise manner, with regard to ascertainment of her age. Furthermore, she had not disclosed that appellant had any access. From her evidence, it is apparent that she had shown presence of other co-accused later on, but neither she, nor her father PW-4, who had gone to bring the victim shown presence of appellant or his other family members. During course of journey through train, she had not complained to any passengers, is another circumstance coupled with the fact that what was necessity for carrying ornaments of her mother along with cash, when the victim as prosecution version, was



kidnapped during midst of way to school.

10. The cumulative effect thereof did not support the finding recorded by the learned lower Court. Consequent thereupon, same is set aside. Appeal is allowed. Appellant is on bail, hence is directed to be discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

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