

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.551 of 2016

Arising Out of PS.Case No. -224 Year- 2009 Thana -
PARSABAZAR District- PATNA

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Akshay Kumar Yadav @ Rudal Yadav son of Sri Vidya Rai Resident
of village- Nisarpura, P.S.- Parsa Bazar, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 11-04-2018

The appellant/Akshay Kumar Yadav @ Rudal Yadav has been convicted under Sections 366(A) and 376 of the Indian Penal Code by judgment dated 15.06.2016 passed by the learned 4th Additional District & Sessions Judge, Patna in Sessions Trial No. 546 of 2010 and by order dated 18.06.2016, he has been sentenced to undergo rigorous imprisonment for seven years each, to pay a fine of Rs. 5000/- for each of the offences in which the conviction has been recorded. The sentences have been ordered to run concurrently.

The appellant is said to have abducted the daughter of the informant viz. Supriya Kumari aged 15 years and committed rape on her.



The father of the victim viz. Manoj Kumar, who has been examined as P.W. 6 has lodged the F.I.R on 28.12.2009 alleging that on 26.12.2009, his daughter went to coaching centre but did not return. On enquiry, he came to learn that his daughter has not visited the coaching centre on that day. On deeper probe, he further learnt that the appellant had abducted his daughter for the purposes of marrying her and in the aforesaid act of kidnapping, the appellant has been helped by one Pramod Kumar. He also learnt that the appellant is keeping his daughter at some unknown place.

On the basis of the aforesaid written report lodged by the informant/P.W. 6, a case vide Parsa Bazar P.S. Case No. 224 of 2009 dated 28.12.2009 was instituted for investigation under Sections 366(A), 120(B) and 34 of the Indian Penal Code.

The police, after investigation, submitted charge-sheet under Sections 366(A), 376 and 34 of the Indian Penal Code on which cognizance was taken and the case was committed to the Court of Sessions for trial.

The Trial Court, after examining nine witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant as aforesaid.

It may be noted here that co-accused Pramod Kumar who is said to have assisted the appellant in



kidnapping the victim girl, has been acquitted for paucity of evidence against him.

During trial, Mahanand Rai, Yugal Kishore Rai and Prem Yadav who have been examined as P.W.s 1, 2 and 4 and who are co-villagers of the informant (P.W. 6) have only claimed to have learnt about the occurrence in the village. They have expressed nothing before the Trial Court to bring home the charges against the appellant.

Similarly, Ram Babu Singh, who is the grand-father of the victim has also stated that he only came to learn that his grand-daughter (P.W. 7) has been kidnapped/abducted by the appellant. He has also not thrown any light on the facts of this case. Similar is the statement of Munna Kumar @ Neeraj Kumar who is the uncle of the victim and who too has been examined at the trial as P.W. 5.

Thus, the informant (P.W. 6), who is the father of the victim and the victim herself (P.W. 7) are the only witnesses on the basis of whose deposition, the conviction of the appellant has been recorded.

It would only be profitable, in order to appreciate the case of the appellant, to go through the deposition of the aforesaid witnesses.

The informant (P.W. 6) though, has supported the prosecution version but has not stated to have seen the



appellant taking away his daughter. He also could not inform the name of the person who disclosed to him that his daughter had been taken away from near the coaching centre by the appellant. After the occurrence, he saw his daughter only in Court premises on 31st of December, 2009. He has further deposed before the Trial Court that when his daughter did not return home, he went to look for her at Jamaluddinchak where the sister of the appellant resided. He has also categorically stated that on 28.12.2009, his daughter was brought to Parsa Bazar Police Station and he visited the Police Station on information having been provided to him by Parasa Barar Police. He has deposed before the Trial Court that he was married in the year 1991-92 and the victim is his eldest issue. He did not remember exactly the date of birth of his daughter.

Supriya Kumari/victim has been examined as P.W. 7 before the Trial Court. She has, though, stated before the Trial Court that she was forcibly taken away from near the coaching centre where she had gone to study but has stated that from the coaching centre to Khagaul, she was brought on a vehicle and thereafter she was taken by train to Ara. The victim was thereafter taken to the house of the aunt of the appellant where she was subjected to rape. However, she has categorically stated that the appellant took her to Garhani



Police Station where the police was informed about their having come to Ara from Parsa. The Garhani Police, in turn, informed the Parsa Police which came and took the informant to Parsa Police Station. She has admitted in her deposition that the appellant is her co-villager. On being specifically questioned, she has stated that she did not consent for being taken to Ara by train. She also raised alarm but nobody paid heed to her request. She alleges to have told many persons whom she saw on way that she was being kidnapped but nobody came to her rescue. At the house of the aunt of the appellant also, she raised alarm but only 2-4 persons came and they also did not offer any help to her. She has also stated that the relationship between the family of the appellant and her family is far from being cordial. When photographs (Ext-A series) were shown to her, she identified those photographs to be of her but denied to have written any letter to the appellant.

From the deposition of P.W. 7, it becomes very clear that she was taken by the appellant from the place where she was allegedly abducted to Ara on train i.e. through a public transport. It does not appear to be probable that her cries for help would not have caught the attention of the fellow travellers. It is difficult to believe her statement that despite her entreaties in the car to the taxi driver and to the fellow



passengers in the train, nobody came to her rescue.

It also appears to be rather surprising that the victim was kept in the house of the aunt of the appellant which was inhabited by other occupants. Had there been any element of force, many persons would have come to know about and it is expected that they would have interceded on her behalf.

Thus, from the deposition of the P.W.s 6 and 7, what becomes fully established is that no force was used for taking the victim to Ara or for that matter to any other place. This proposition further gets strengthened by the admission of the victim that the appellant himself brought her to Garhani Police Station when he came to learn about the case having been lodged against him by the father of the victim.

Had there been any intention to kidnap or abduct the victim, the appellant would not have brought her to the Police Station of his own; rather he would have run away leaving the victim defenseless and without help.

Thus, for all practical purposes, it is difficult to accept the story of kidnapping/abduction. In that view of the matter, no offence under Section 366(A) I.P.C can at all be said to have been made against the appellant.

Now to the question of rape of the victim.

From the narration of the events though the



deposition of the witnesses, it further becomes very clear that the victim was known to the appellant. The letters and photographs further reconfirm the aforesaid acquaintance. The fact that the victim travelled with the appellant to distant places is suggestive of the fact that the appellant was not unknown to the victim.

Then the question arises as to what was the age of the victim for her to give consent for sexual relationship. Though the informant (P.W. 6) as well as the victim (P.W. 7), both have disclosed the age to be 15 years on the date of the abduction but the victim, during her trial on 03.08.2011 had again stated her age to be 15 years. This was after more than one and half years of the occurrence. It, therefore, appears that the projection of the age of the victim was not correct at any point of time.

The doctor (P.W. 8), who examined the victim has stated at the trial that no radiological report was received from the P.M.C.H and therefore, her age could not be determined.

The projection of the age of the appellant being less than 16 years of age (the age of majority as on 26.12.2009) is not found to have been established during the trial.

The Investigating Officer (P.W.9) of this case though, has recorded the age of the victim as 15 years during



the course of investigation but did not examine the mother and the grand-mother of the victim to ascertain her age.

Neither the Director of the coaching centre nor the Principal of the school which the victim first attended were examined by the Investigating Officer. It was also not verified by him whether the victim had been a student of any coaching centre. There was no effort on the part of the Investigating Officer to garner or procure any certificate regarding the age of the victim.

However, from the following circumstances, it is difficult to presume that the victim was below the age of majority; (a) the prosecution has deliberately suppressed the age of the victim (b) the father of the victim has deposed that he does not exactly remember the date of birth of his daughter (c) the medical test which was conducted at P.M.C.H for determination of the age of the victim was never brought on record (d) even though the victim is stated to be a student who had been attending coaching classes but no certificate or school register was brought on record in support of the aforesaid projection of her age (e) as stated earlier, neither the Director of the coaching institute nor the head of any institution had been examined or brought to the witness box to affirm the date of the victim.

Thus, from the circumstances, it appears that if the



occurrence had taken place on 26.12.2009, the victim would have been around the age of 16 years. The increase in the age of majority from 16 to 18 years has only been brought about after the amendment on 03.02.2013.

Thus, it appears that if at all the occurrence had taken place, it was with the consent of the victim who was not a minor but a major.

From the circumstances, it can safely be inferred that the victim was not taken away by the appellant forcibly. Since the relationship between the family of the victim and the appellant was far from cordial, her association with the appellant was not taken in good light and therefore, this case has been lodged. That apart, no mark of injury or sign of rape could be ascertained by P.W. 8, the doctor who had examined the victim.

This Court, therefore finds the prosecution case doubtful at all stages. Under such circumstances, the benefit of doubt will have to be given to the appellant.

Accordingly, the judgment and order of conviction and sentence dated 15.06.2016 and 18.06.2016 respectively passed by learned 4th Additional District & Sessions Judge, Patna in Sessions Trial No. 546 of 2010, arising out of Parsa Bazar P.S. Case No. 224 of 2009 is set aside.

The appeal is allowed.



The appellant is acquitted of all the charges.

The appellant is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

Let a copy of the judgment be transmitted to the Superintendent of the concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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