

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.353 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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Bajjnath Sao, Son of Late Bhola Sao, Resident of Village – Obra, P.S. – Obra,
District – Aurangabad.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mrs. Meena Singh, Adv.
Mr. J. Upadhyay, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-03-2018

This appeal is directed against the judgment of conviction dated 28-06-2003 and order of sentence dated 30.06.2003, passed by Sri Umeshwar Nath, the then 5th Additional Sessions Judge, Aurangabad in Sessions Trial No. 221/1997, 50/2003 by which the sole appellant Bajjnath Sao was convicted under Sections 363, 366A, 376 and 379 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for seven years under Section 363 IPC, R.I. for ten years under Section 366A of IPC, R.I. for ten years under Section 376 IPC and R.I. for two years under Section 379 of the IPC. All the sentences were directed to run concurrently.

2. Prosecution case as per the fardbeyan of informant Deyanand Devedi recorded by the officer-in-charge Obra Police Station, in short



is that twenty days prior at about 7. A.M., daughter of the informant went to purchase some domestic articles from the shop of appellant Baijnath Sao but she did not return, thereafter, informant went to the shop of appellant Baijnath Sao but he found that the shop was closed and the appellant and daughter of the informant was also not available there. Then the informant searched his daughter and accused at the place of his relatives and also at the place of relatives of the appellant but he did not find them. It is further alleged that appellant Baijnath Sao was married person and the informant believed that the appellant Baijnath Sao has enticed away his minor daughter

3. On the basis of the aforesaid statement of informant Obra P.S. Case No. 106/1996 was registered.

4. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Umeshwar Nath, the then 5th Additional Sessions Judge, Aurangabad, for trial and disposal.

5. Charges were framed under Sections 363, 366A, 376 and 406 of the IPC.

6. To substantiate the charges, prosecution examined altogether eleven witnesses, out of which P.W. 1 Siyaram Dubey and P.W. 2 Rajdeo Dubey appears to be hearsay witness, P.W. 3 – Deyanand Divide is the informant and father of victim girl, P.W. 4 – Basanti



Devi, mother of victim girl, P.W. 5 – Sandhya Kumari, victim girl, P.W. 6- Subhash Chand, the then Judicial Magistrate, who recorded the statement of victim girl under Section 164 Cr.P.C., P.W. 7 – Lalsa Sinha and P.W. 8 – Pushpa Thakur are the doctors, who examined the victim girl and assessed her age between 14 to 16 years and also stated that the victim was carrying a pregnancy of 28 to 32 weeks, P.W. 9 – Braj Kishor Tiwary, a hearsay witness, P.W. 10 – Mahendra Singh, a witness of seizure list –cum- production, which is marked as Ext. 4 and P.W. 11 – is a formal witness, who proved the formal F.I.R.

7. On conclusion of trial, the Trial Court has convicted the appellant under Sections 363, 366A, 376 and 379 and sentenced him in the manner as stated above.

8. Contention of learned counsel for the appellant is that the evidence itself shows that the alleged victim girl was a consenting party and had gone with the appellant out of her own sweet will and was residing with the appellant and though it is stated by the witnesses that the girl was aged about 14 years but doctor has found her age between 14 to 16 years and if principle of plus minus two years is applied, then the victim girl would be major at the time occurrence. Further submission of learned counsel for the appellant is that in this case, no charge has been framed under Section 379 of the



IPC and charge was framed under Section 406 of the IPC but the Trial Court has convicted the appellant also under Section 379 of the IPC and in absence of charge conviction of appellant under Section 379 of the IPC is bad in law.

9. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by the Trial Court and has submitted that the girl was minor at the time of alleged occurrence and even if it is believed that the girl was a consenting party but the consent of minor is of no value in the eye of law and evidence of P.W. 4 Basanti Devi also shows that earlier also, the victim girl was raped by the said Baijnath Sao in the shop as she was carrying a pregnancy of 28 to 32 weeks and further the evidence of victim girl also shows that she was enticed away by the appellant and was raped, as such, there is no infirmity in the impugned judgment of Trial Court and conviction of appellant under Sections 363, 366A, 376 and 379 of the IPC is just and proper.

10. In the background of rival contentions of the parties, on perusal of the evidence of witnesses, it appears that P.W. 1 and P.W. 2 are the hearsay witnesses. P.W. 3 is the informant in this case and he has supported the case of prosecution in his evidence in court also and has disclosed that appellant has enticed away his minor daughter, while she had gone to purchase some domestic articles. Evidence further



disclosed that the appellant and the girl was recovered from Dhanbad from the house of the relative of the appellant and, thereafter, the girl was brought back and after recording her evidence, she was handed over to this witness and girl disclosed him that the appellant has taken away her and he had done wrong act with her. P.W. 5 is the victim girl in this case and she has stated in her evidence that she was going to the house of her *Mausi* and in the way appellant Baijnath Sao met her and taken her with himself on the plea that he will take her to her *Mousi's* house, thereafter, he brought her to Dhanbad to the house of his sister and there he committed rape on her and also threatened her. This witness has been cross-examined at length but there is nothing in her evidence to doubt the credibility of her testimony. P.W. 4 is the mother of informant and she too has supported the case of prosecution. P.W. 6 is the doctor, who recorded the statement of victim under Section 164 Cr.P.C. P.W. 7 and P.W. 8 are the doctors, who examined the victim girl and their evidence disclosed that the girl was carrying a pregnancy of 28 to 32 weeks and further appears from their evidence that the age of girl was assessed at 14 to 16 years. P.W. 10 is the seizure list –cum- production and P.W. 11 is the formal witness, who proved the F.I.R.

11. On consideration of entire evidence available on record, it appears that there are consistent and cogent evidence available on



record to show that the appellant enticed away the minor daughter of the informant and took her to the house of his sister at Dhanbad and committed rape on her and they both were recovered from the house of the sister of appellant from Dhanbad. Though a plea has been taken that the girl was consenting party, however, as she was minor at the time of occurrence, the consent of minor is of no value in the eye of law. As such the conviction of appellant under Section 363, 366A and 376 of the IPC appears to be just and proper and the same is hereby affirmed.

12. So far conviction of appellant under Section 379 of the IPC is concerned, it appears that in this case no charge was framed under Section 379 of the IPC and as such the conviction of appellant under Section 379 of the IPC does not appear to be sustainable in the eye of law and the same is hereby set aside.

15. A submission has been made by learned counsel for the appellant that appellant has already remained in custody for seven years during trial and maximum sentence is ten years and occurrence is of the year 1996 and twenty two years have elapsed since the date of occurrence and, therefore, a lenient view may be taken and the period of sentenced may be reduced to a period already undergone by him in judicial custody.

13. Considering the facts and circumstances and the submission of



learned counsel for the appellant, the sentence of appellant is reduced to the R.I. for seven years in each count and all the sentences shall run concurrently. Appellant shall also be entitled for benefit of setting off the period of sentence already undergone by him in judicial custody in accordance with law.

14 With the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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