

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.279 of 2003

Arising Out of PS.Case No. -36 Year- 1999 Thana –Raushanganj, District- GAYA

=====

Bhotia Mian @ Nasim Mian, son of Budhu Mian resident of Gawal Bigha, PS
Rampur, District Gaya

.... Appellant

Versus

State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Gayasuddin Khan
Mr. Ram Bilash Prasad

For the Respondent/s : Mr. Z Hoda, APP

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-02-2018

The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 17.4.2003, whereby the sole accused has been convicted under Sections 363 and 366A IPC by learned 5th Additional Sessions Judge, Gaya in Sessions Trial No. 54 of 2000/380 of 2000, consequently sentenced him to undergo seven years R.I. for committing the offence of kidnapping under Section 363 IPC and also fine of Rs. 5000/- and in default of making payment of fine to further undergo two years R.I. and for committing the offence of procurement of minor girl under Section 366A R.I. for ten years and also fine of Rs. 10,000/- and in case of default in payment of fine to further undergo imprisonment for three years, however both the sentences would run concurrently.

2. The appellant being aggrieved and dissatisfied with the judgment of conviction has preferred this appeal mainly on the ground that



in absence of cogent evidence the prosecution failed to prove the charge and despite that he has been convicted.

3. The brief fact giving rise to the prosecution case is institution of formal FIR i.e. Roshanganj (Banke Bazar) PS Case No. 36 of 1999 registered on 26.9.1999 on the basis of fardbeyan given by Sabita Devi (PW 2) relating to the occurrence of kidnapping of her daughter dated 16.8.1999. In the fardbeyan she discloses that her daughter Bebi Kumari aged 12 years left in the morning for her school at Banke Bazar but she did not return back to home till 6 PM in the evening so she along with her family members went out in search of her but no clue was found, so next day on 17.8.1999 she went to Banke Bazar P.S. and gave information regarding her daughter being traceless; accordingly the police lodged a sanha entry. The informant still made an effort along with her family members to search her daughter but two-three days prior to institution of the FIR one Ajay Kumar, a co-villager who returned his home from house of his maternal grand-father disclosed that he had seen Bhotia Mian @ Nasim of Village Gawalbigha taking away the informant's daughter in a bus in the evening on 16.8.1999 at around 4-5 PM.

4. The police after registering the FIR commenced investigation in the matter and on its closure submitted charge-sheet against the sole accused under Sections 363 and 366A IPC. The trial court framed charge against the appellant and on conclusion of the trial has convicted the accused as earlier mentioned in this judgment.

5. Learned Counsel appearing on behalf of the appellant submits



that out of six prosecution witnesses, PW 6 is the Investigating Officer of the case, whereas rest others are hearsay witnesses except PW 1 Ajay Kumar, who claims to have seen the appellant taking away the informant's daughter on 16.8.1999 in between 4-5 PM in the evening, but his testimony is not trustworthy for the reason that he did not object the appellant taking away the informant's daughter, not only that he did not inform anyone in this regard and after lapse of one month ten days he disclosed it to the girl's mother (PW 2) but neither disclosed the registration number of the Bus nor any other identity of the bus. It is also not the case of the prosecution that the girl was recovered from his possession. So merely on the evidence of Ajay Kumar (PW 1) the trial court has convicted the appellant, though his evidence is not reliable in absence of corroborative piece of evidence.

6. Learned Counsel appearing on behalf of the State submits that the girl of 12 years of age was enticed away by the appellant and this fact is proved by the evidence of PW 1 who saw the appellant taking away the girl in a bus thereafter she was not recovered and is traceless.

7. On critical analysis of evidence adduced in the present case by the prosecution this is apparent that entire case of the prosecution rests around testimony of Ajay Kumar (PW 1), a co-villager of the informant Sabita Devi (PW 2). No one has seen the appellant taking away Baby Kumari except PW 1, so whether the testimony of PW 1 is reliable and trustworthy or not is the moot question in this appeal as the trial court placing reliance on sole testimony of P.W. 1 has convicted the appellant.



It is not the prosecution case that prior to the occurrence there was any love affair between the appellant and the daughter of the informant Sabita Devi (PW 2) so it is a case of kidnapping by force and not of elopement. The appellant is also not the co-villager of the informant rather a resident of far away village and he is said to be a hawker selling incensed sticks roaming one village to another. The informant's daughter Baby went traceless on 16.8.1999, while she had gone to attend her school thereafter failed to return back, her mother made all sincere efforts to search her but could not locate the girl. Next morning on 17.8.1999 she gave information to the police regarding missing of her daughter and a sanha entry was recorded by the police which is Ext. 3/1 in this case. No suspicion was raised against anyone. PW 2 Sabita Devi lodged the FIR on 26.9.1999 after a lapse of one month ten days approximately naming the appellant asserting that he had kidnapped her daughter on the basis of information divulged by a co-villager Ajay Kumar (PW 1). The evidence of PW 1 is not reliable and trustworthy for the reason that he did not disclose the fact that the informant's daughter was taken away by this appellant for more than a month. Moreover, Ajay Kumar (PW 1) is not a co-villager of the informant rather a resident of another village and also not related with the informant so how he knew the informant's daughter is not revealed from the testimony of PW 1 and PW 3 Savita Devi. With regard to residence of Ajay Kumar PW 1 there is contradiction in between his testimony and deposition of PW 3 Savita Devi. PW 1 has deposed that his village is Dumrama, the village of the PW 3, whereas according to PW 3 as stated in



para 2 of her deposition Ajay Kumar PW 1 is resident of another village Khapraul situated at a distance of half kilometer from her village Dumrama. 1.

8. The evidence of PW 1 shows that the girl was taken away in Shivam bus, whereas this fact was not disclosed to the I.O. (PW 6) because he admits that he does not know the name of the bus by which the girl was taken away. The evidence on record especially the testimony of I.O. (PW 6) reflects that he also not made any effort during investigation to identify the bus quality the girl was taken away.

9. So the evidence of PW 1 is not reliable and trustworthy to prove the charge of kidnapping against the appellant. The I.O. has also failed to recover the girl. So, the prosecution case has not been proved by the prosecution beyond all reasonable doubt that the appellant had taken away or enticed away daughter of the informant Sabita Devi.

10. Therefore the conviction and sentence awarded to the appellant is set aside. The appellant is on bail, so also discharged from the liability of the bail bonds.

11. The appeal stands allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.03.2018
Transmission Date	13.03.2018

