

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.258 of 2003

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

=====

Dinesh Mistry @ Dinesh Sharma, son of Sheo Kamaldeo Mistry, resident of village
Amarpura, P.S. Naubatpur, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Birendra Narayan Sharma, Advocate

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

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-02-2018

Sole appellant stands convicted under Section 364 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years vide judgment and order dated 29.4.2003 and 30.4.2003 passed by Sri N.C. Lala, the then Ad hoc Sessions Judge, Presiding Officer, Additional Court No.2, Patna in Sessions Trial Case No. 765 of 1992/178 of 2001.

2. Prosecution case as per fardbeyan of informant Ram Chandra Banarsi (P.W.1), in short, is that on 20.2.1992 the informant went to Ajamgarh with his family and on 22.3.1992 when he returned to Naubatpur, his sister's son Mahendra aged about 13-14 years at that time, informed him that on 24.2.1992 at about 8 A.M. he went along with Geeta (sister's daughter) to Danapur Railway Station and after purchasing two tickets they boarded the train for going to Ajamgarh and when the train was to start, the accused Dinesh Mistry also boarded in the same compartment and asked him to get down but Mahendra was not ready to get down and in the meantime the train



started and was moving slowly when the accused pushed him down and the train speed away and the accused took away Geeta with him towards west.

3. On the basis of aforesaid fardbeyan, Danapur Rail P.S.Case No. 8 of 1992 was registered. After investigation police submitted charge sheet and cognizance was taken and after commitment the case traveled to the file of Sri N.C.Lala, the then Ad hoc Sessions Judge, Presiding Officer, Additional Court No.2, Patna for trial and disposal.

4. In this case charges were framed against the accused appellant under Section 364 IPC.

5. During trial the prosecution has examined altogether six witnesses in support of the prosecution case, they are P.W.1 Ram Chandra Banarsi, who is informant in this case, P.W.2 Mahendra Sah, who is sister's son of informant, P.W.3 Dhanauti Devi, who is mother of victim girl, P.W.4 Bindi Yadav, P.W.5 Ramanuj Yadav, who has been tendered for cross examination, and P.W.6 is Shashi Bhushan Kumar, A.S.I., who had investigated the case.

6. From perusal of the evidence it further appears that all the witnesses except Mahendra Sah (P.W.2) are hearsay witnesses and they have disclosed on the basis of evidence of P.W.2.

7. Defence of accused is of simply denial of the occurrence and of innocence.

8. Learned trial court on conclusion of trial has convicted the



appellant under Section 364 IPC and sentenced him as stated above.

9. Being aggrieved by the said judgment and order the present appeal has been preferred and contention of learned counsel for the appellant is that the learned trial court has not considered that all the witnesses are hearsay witnesses except P.W.2 and evidence of P.W.2 does not inspire confidence as he has stated that he was pushed from the train and further his evidence shows that the compartment was full but he never raised alarm nor the victim girl raised any alarm and information has also been lodged after more than one month which clearly shows that there is cloud about the manner of occurrence and, as such, the conviction of appellant under Section 364 IPC is not free from infirmity and not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has defended the impugned judgment on the ground that evidence of P.W.2, who is eye-witness to the occurrence, is free from infirmity and that has been supported by other witnesses in their evidence. Further point is that though there is no eye-witness to the occurrence there is nothing to doubt the evidence of P.W.2 of its credibility and hence the conviction of the appellant is free from infirmity and does not require any interference by this Court.

11. Having heard both sides and considering the rival contentions of parties and on perusal of the record it appears that P.W.1 is the informant in this case and he is not an eye-witness to the occurrence but later on he claimed that P.W.2 had narrated the whole



story to him and furthermore it appears that there is delay of more than one month in lodging the FIR. No doubt it is stated that mother of the victim girl was waiting for the informant to come to the house from Benaras but she has not even approached the local Choukidar or Gram Panchayat person or any other person with respect to the kidnapping of her daughter, which creates doubt about the prosecution story. Apart from that, evidence of P.W.2, who is brother of the victim girl, shows that while he boarded the train along with his sister the appellant also boarded the same compartment and asked him to get down from the train and when he refused to do so he was pushed from the train and his cross examination shows that the compartment was full and the same must be noticed by other passengers also and even the girl, who is aged 18-19 years as per evidence of P.W.3, has not raised any alarm and all these facts create doubt about manner of occurrence. Further P.W.2 has not approached the police personnel and nobody comes for help, rather FIR has been lodged after more than one month of the occurrence, which casts doubt about the prosecution story also. However, learned trial court has not considered the aforesaid aspects of the matter and he tried to explain the delay on the ground that as informant was not present, as such, there is delay in lodging FIR but learned trial court has failed to understand that even if the informant was not present at the time of occurrence, the mother or brother of the victim girl ought to have informed the local Choukidar or Gram Panchayat persons or any other person about the



occurrence but no such step was taken either by mother or brother of victim girl and moreover there is delay of more than one month in lodging of FIR and evidence of P.W.2, who claims to be an eye-witness to the occurrence, also does not inspire confidence, as disclosed above. In such a situation, the conviction of the appellant under Section 364 IPC is not free from infirmity and discrepancy.

12. Accordingly, this appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. As the appellant is on bail, he is directed to be discharged from the liability of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.2.2018
Transmission Date	27.2.2018

