

Criminal Appeal (SJ) No.6 of 2003

Against the judgment of conviction dated 04.12.2002 and order of sentence dated 09.12.2002 passed in Sessions Trial No.347 of 2000 by learned Additional Sessions Judge-VI, Begusarai.

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Sudhanshu Ranjan Jha @ Budhiya, son of Nitya Nand Jha, resident of village- Amba, Police Station- Teghra, District- Begusarai.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Shashi Dhar Jha, Advocate

For the State : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 13-01-2018

Heard Sri Shashi Dhar Jha, learned counsel for the appellant and Sri Sujit Kumar Singh, learned A.P.P. representing on behalf of the State.

2. This appeal has arisen out of the judgment dated 4th day of December, 2002 passed by learned Additional Sessions Judge-VI, Begusarai in Sessions Trial No.347 of 2000 by which the learned trial court while holding that no offence under Section 363 or Section 366(A) of the Indian Penal Code is made out against the appellant went on to hold that the evidences suggest that an offence punishable



under Section 365 I.P.C. is made out against him. The learned trial court, therefore, convicted the appellant for the offence under Section 365 I.P.C. taking note of the fact that even though the charge has not been framed under the said provision but it is not going to prejudice the accused in any manner because of the fact that whether minor or major a woman was enticed away by him and further it is permissible under Section 221 (2) of the Cr.P.C.

3. The fact emerging from the judgment of the trial court are as follows :

4. One Ashok Kumar Singh (P.W.4) lodged a first information report dated 18.1.1999 in which he alleged that on 12.12.1998, his daughter Ekta Kumari (P.W.5) had gone to her college but could not return, on hectic search he came to know that Sudhanshu Ranjan Jha (appellant) who was also residing in the same house under tenancy with his cousin and mother lured his daughter and had kept or confined her at a secluded place. He further alleged that he on his own requested to hand over his daughter to him over which his family members concealed and told him that in one or two days her daughter will return but her daughter did not return and the informant and his family was getting threatening.

5. After completion of investigation, police submitted a charge sheet against this appellant and his cousin under Sections 363



and 366(A) I.P.C. Since the offences were triable by the court of Sessions, therefore, after taking cognizance and commitment the records were transferred to the court of Sessions and subsequent to that the matter was finally disposed of by the judgment under appeal.

6. It further appears from the judgment of the learned trial court that from the pattern of the cross examination and the statement recorded under Section 313 Cr.P.C. the defence of the accused persons was that they had been falsely implicated in the case as they were innocent and they completely denied this occurrence.

7. In support of the prosecution case, altogether eight witnesses were produced in the trial court. P.W.1 and P.W.2, who are the neighbours and independent witnesses were declared hostile. P.W.3 is the mother of the victim girl who has supported the prosecution, P.W.4 is the father who is also informant in this case has proved the fardbeyan and P.W.5, Ekta Kumari is the victim girl herself who has deposed in course of evidence. P.W.6 is the house owner of the house in which the family of the informant was living as a tenant who has been declared hostile. P.Ws.6 and 7 are the prosecution witnesses who have completely shown their unawareness with the alleged occurrence and thus they were declared hostile. The I.O. in this case was not examined.

8. The defence has not led any evidence and has relied upon



contradictions in the statement of the prosecution witnesses as also the story which has revealed from the deposition available on the record to demonstrate that the prosecution has failed to prove the allegations against the appellant beyond all reasonable doubts. In course of trial, the cousin brother of the appellant was acquitted whereas this appellant has been convicted as stated above.

9. From the trial court judgment, it would appear that the trial court has relied upon the statement of P.W.3 (mother), P.W.4 (father) and P.W.5 (the victim girl). The mother of the victim girl in course of her deposition stated the prosecution case that while her daughter Ekta Kumari had gone to her college being a student of B.A. Part-I, she did not return. It is stated that she came to know from the neighbours that her daughter had gone with the appellant. She is said to have contacted the mother and father of this appellant who told her that the victim girl will be brought but her daughter did not come back. She further stated that this appellant was teaching the victim girl. She also stated that her daughter returned after one month. In course of her cross examination, she has stated that she had not seen anybody taking away her daughter. She has further stated that the information of this occurrence was not given by her to her husband immediately because she was expecting return of her daughter. She has stated that no statement was made by her to police.



10. P.W.4 has again stated that her daughter went missing since 12.12.1998. He also stated that this appellant and his cousin brother were also missing during this period. This witness states that he had contacted the father of this appellant who had given him a promise that in 2-3 days his daughter will come back. In his cross examination, he has stated that after one month his daughter came back with his brother. This witness has stated that because Sudhanshu Ranjan Jha (appellant) was missing during this period therefore on suspicion he had given his name in this case. He has further stated in his cross examination that his daughter is major and she had not made any complaint of taking her away forcibly. He has further admitted in his cross examination that no ill behaviour or conduct was done with his daughter.

11. P.W.5 is the victim girl who has deposed in course of trial and in her deposition, she has clearly stated that this appellant had only informed her that he was going to Delhi and her husband had called her therefore if she desires to accompany him she can come with him. The victim girl thereafter accompanied this appellant and his cousin. At Barauni station, mother of the appellant also came and all of them reached Delhi. This witness thereafter states that she did not find her husband there at Delhi, therefore, she complained this appellant that he had spoken a lie with her. She further states that she



wanted to go to her Mousa's residence but was not taken there. Thereafter, she called her husband who came there and took her with himself. She stated that her father went to her sasural from where she came back with her father.

12. In course of her cross examination, this witness has stated that the appellant and her husband both were working at the same place at Delhi. She has categorically stated that she had gone there with on her own will and was not taken away by applying any force. She has further stated that when she reached Delhi, her husband had gone to outside and, therefore, she went to her Mousa's house. Nobody stopped her from going to her Mousa's house. She has further stated that her husband came and took her to his house. She has categorically stated that she had no complaint at all with the accused persons.

13. Learned counsel for the appellant submits that from a bare perusal of the statement of the mother (P.w.3), father (P.W.4) and the victim girl (P.W.5), it would appear that the family of the appellant and that of the informant were living in the same house. The informant's son-in-law and the appellant were working together at New Delhi. The victim girl (P.W.5) had gone to her husband's place together with the appellant, his cousin and mother because both the appellant and the husband of the P.W.5 were living at Delhi. In her



cross examination, this P.W.5 has categorically stated that when she reached the house of her husband, he was not there, therefore, she went to her Mousa's house, nobody stopped her from going there and her husband came there to take her back to his house. She repeatedly said that she had gone to Delhi on her own will and no force was applied against her. He has further stated that the learned trial court at one place while considering the age of the victim girl (P.W.5) observed that she was 17 years of age at the time of alleged occurrence by totally ignoring the fact that the father of the victim girl had lodged the F.I.R. clearly stating therein that she was 19 years of age at the time of occurrence and even in her deposition, the victim girl has stated in course of the trial that she was 19 years of age at the time of alleged occurrence. She was a married woman and accepts that she had gone to her husband's place on her own will.

14. Learned counsel submits that the learned trial court was therefore not justified in convicting the appellant under section 365 I.P.C. It is further submitted that in the present case, there was no material at all against the appellant inasmuch as the victim girl had herself stated that she had no complaint with the appellant. He submits that even the mandatory compliance of Section 313 Cr.P.C. has not been followed properly in the present case. It is submitted that in this case there was no material at all to convict the accused and



therefore if the learned trial court was of the opinion that there is any material which is going against the accused, the attention of the accused should have been drawn towards such materials in course of his statement under Section 313 Cr.P.C. It is submitted that the Hon'ble Apex Court in the case of **Sukhjit Singh Vs. State of Punjab** reported in **2014(10) SCC 270** has interpreted the provisions of Section 313 Cr.P.C. and emphasis has been given on this aspect of the matter which has been completely ignored by the learned trial court.

15. Having heard learned counsel for the appellant and the learned Additional Public Prosecutor, I am of the considered opinion that in this case, the prosecution has failed to prove the charges against the accused-appellant. On the face of the statement of the victim girl itself, there was no evidence or reason for the learned trial court to convict the appellant under Section 365 I.P.C. Even the mandatory provision of Section 313 Cr.P.C. has not been complied with inasmuch as the accused was not informed as to what evidences or materials have come against him in course of prosecution evidence. In the opinion of this Court, the judgment under appeal is liable to be set aside and the conviction of the appellant must go by allowing this appeal and discharging the accused-appellant from the liability of the bail bond.



16. I do accordingly.
17. Accordingly, the appeal is allowed.

(Rajeev Ranjan Prasad, J)

N.H./-

AFR/NAFR	NAFR
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