

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.361 of 2003

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

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Madan Ravidas @ Mulhai Ravidas, son of Sri Jhaksu Ravidas, resident of village
Phulwaria Mathuriabari, P.S. Kurha, District Katihar

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 364 of 2003

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

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Wakil Rabidas, son of Bisambhar Rabidas, resident of village Laxmipur, P.S.
Barari, District Katihar

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.361 of 2003)

For the Appellant/s : Mr. Rajendra Prasad Sah with
Mr. Ratnakar Ambastha, Advocates

In Cr.App (SJ) No. 364 of 2003

For the appellant : Mr. Sunil Prasad Singh, Advocate
(amicus curiae)

(In both the appeals)

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-03-2018

Since both the appeals arise out of the common judgment
and order they have been heard together and are being disposed of by
this common judgment.



2. No body appears on behalf of appellant in Cr.Appeal (SJ) No. 364 of 2003 on repeated calls, as such Mr. Sunil Prasad Singh, Advocate, has been appointed as amicus curiae by this Court to assist this Court.

3. Appellant Madan Ravidas in Cr.Appeal (SJ) No. 361 of 2003 and appellant Wakil Ravidas in Cr.Appeal(SJ) No. 364 of 2003 have been convicted under Sections 363/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years, further they have been convicted under Sections 366A/34 IPC and sentenced to undergo rigorous imprisonment for five years and further they have been convicted under Sections 376/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and all the sentences were directed to run concurrently vide judgment dated 31.5.2003 and order dated 5.6.2003 passed by Sri Yogendra Prasad, the then 1st Additional Sessions Judge, Katihar in Sessions Trial No. 45 of 2000.

4. Prosecution case as stands on the basis of written report of informant Raju Singh (PW 5), in short, is that his daughter Bobby Kaur was married five months prior to Sardar Bhajan Singh of village Nauratan, District Sitapur (Uttar Pradesh) and for the last two months she was living in his house. It is further alleged that on 17.3.1999 at 8



P.M. appellant Wakil Ravidas, Deoki Devi and Chhattu Harijan enticed the victim Bobby Kaur away with intention to get her married, when she had gone out of her house to attend the call of nature and in spite of rigorous search she was still traceless and, as such, this information was given to the police.

5. On the basis of the aforesaid written report Barari P.S.Case No. 39 of 1999 was registered on 26.3.1999 under Sections 366/34 IPC. After investigation charge sheet has been submitted against the accused appellant Madan Ravidas @ Mulhai Ravidas showing the accused Wakil Ravidas as absconder and accordingly cognizance of the offence has been taken under Sections 363, 366A and 376/34 IPC and the case was committed to the court of sessions which ultimately came to the file of the learned Trial Judge for trial and disposal.

6. In this case altogether seven witnesses have been examined on behalf of prosecution, they are PW 1 Lakhan Das, PW 2 Rambha Kaur, who is mother of victim girl, PW 3 Jonty Kaur, who is aunt of the victim girl, PW 4 Bobby Kaur, who is victim, PW 5 Raju Singh, the informant, who is father of the victim girl, PW 6 Indar Singh, who is uncle of the victim girl and PW 7 Awadh Narain Singh. The I.O. has not been examined.



7. Learned trial court has also examined Sakaldeo Rai, the then Judicial Magistrate, 2nd. Class, Katihar, who has recorded the statement of victim girl under Section 164 Cr.P.C. as CW 1 and Dr.Mini Rani as CW 2, who has examined the victim Bobby Kaur and submitted her medical report (Ext.4).

8. It appears from the evidence of PW 4 Bobby Kaur, the victim girl, that she had gone to attend the call of nature and 4-5 boys came to her and inserted cloth into her mouth and she was lifted on a bicycle and taken towards Fulbaria chowk by them. Appellants Madan and Wakil committed rape upon her in a house against her will. Next day they took her to Godda and she was kept there 4-5 days in a house of their relative by them and then she was taken to Bombay, where she was kept in a hotel for three days and both the accused appellants have committed rape upon her. She was then taken to Gorakhpur by the accused persons where the accused appellant forcibly committed rape upon her and from Gorakhpur she was taken to Katihar and she informed her father from there. This witness has been cross examined at length but in spite of her cross examination her statement discloses that she was taken different places and was committed rape by the accused appellants and she was recovered from Fulbaria and there is nothing in her evidence to discredit her evidence



about her being taken by appellants..

9. PW 5 is the informant in this case and though there is no eye-witness of kidnapping, her evidence discloses that she was kidnapped by Chhattu Das, Deoki Devi and Wakil Das. He has proved the written report as Ext.1. His evidence also discloses that his daughter was at the age of 15-16 years and he was deposing in May, 2001 and occurrence is of the year 1999.

10. The evidence of PW 6 shows that Wakil Das had taken her niece and at that time victim had gone to attend the call of nature.

11. PW 1 is seizure list witness and has proved his L.T.I. over the same.

12. PW 2 is mother of victim girl and her evidence discloses that on 17.3.1999 at 8.30 in the night her daughter went to attend the call of nature and accused Wakil Das kidnapped her.

13. PW 3 Jonty Kaur is aunt of the victim girl and her evidence discloses that the victim was kidnapped by accused persons but she does not appear to be an eye-witness to the occurrence.

14. On close scrutiny of the entire evidence it appears that PW 4 is only witness on the point of kidnapping and subjecting her to rape.

15. Learned trial court has also examined Sakaldeo Rai, the



then Judicial Magistrate, 2nd Class, Katihar, who has recorded statement of victim girl under Section 164 Cr.P.C. (Ext.2) as CW 1 and Dr. Mini Rain is CW 2, who has examined the victim girl and from her evidence it appears that on the basis of Radiological report and dental examination she assessed her age at 14-15 years and her report also shows that on Microscopic examination no spermatozoa was found but she has stated that she is used to sexual intercourse. In her cross examination she has also stated that she cannot say as to whether victim had sexual intercourse one month before her examination. So, evidence of Doctor did not show sign of rape upon her. Furthermore, the Doctor had assessed her age at 14-15 years and assessment of medical report varies +- 2 years and if it is taken in favour of the accused appellants she was found to be at the age of 17 years at the time of occurrence.

16. Section 375 IPC prior to 2013 amendment provides as follows :

“375. Rape – A man is said to commit “rape” if he-
(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or
(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra



or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following descriptions:-

.....Sixthly.- With or without her consent, when she is under sixteen years of age”

16. Considering the medical evidence and evidence of the victim it appears that she was subjected to rape at different places and she had gone with the accused persons from place to place but she had not raised any alarm. Though her evidence discloses that she moved from one place to other by train, steamer and bus, in such situation, there was ample opportunity for her to raise alarm but there is no evidence to suggest that she ever tried to raise alarm, as such she appears to be a consenting party. As discussed above, according to medical opinion she appears to be more than sixteen years of age. In such a situation, the conviction under Section 376 IPC does not appear to be sustainable in the eye of law.



17. However, on the basis of evidence on record which has been corroborated by her statement under Section 164 Cr.P.C. and also considering the fact that for the purpose of kidnapping, the girl must be below 18 years and in this case girl was below 18 years of age. It appears that she was taken by accused persons from place to place and appellant Madan forcibly married her and as she was below 18 years of age her consent or no consent has no help to the appellants. In such a situation, conviction of the appellants under Section 366A IPC appears to be just and probable. It further appears that learned trial court has also convicted the appellants under Sections 363/34 IPC but once they have been convicted under Section 366A/34 IPC, the conviction under Sections 363/34 IPC becomes redundant. As such, conviction of the appellants under Sections 366A/34 IPC is quite sustainable and hence affirmed.

18. In the result, conviction and sentence of the appellants under Sections 363 and 376 IPC are set aside and conviction under Section 366A IPC is affirmed.

19. Learned counsel for the appellants has submitted that appellant Madan Rabidas has remained in custody for more than four years and appellant Wakil Rabidas has remained in custody for about 3 years 10 months and occurrence is of the year 1999, as such lenient



view may be taken that sentence be reduced to the period already undergone by them in custody.

20. Considering the prosecution case and the facts and circumstances of the case and also considering the fact that this is an old case, the period of sentence under Sections 366A/34 IPC is reduced to a sentence for R.I. of five years.

21 . With the aforesaid modification in conviction and sentence, both the appeals are dismissed.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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