

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.249 of 2003**

Sessions case no. 371/1989 arising out of Sultanganj P.S. case no. 202/1986
District- BHAGALPUR

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Bibhuti Yadav son of late Rasik Lal Yadav resident of village Kumarpur P.S.
Sultanganj Dist.Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha
Mr. Bhola Prasad

For the Respondent/s : Mr. S.C. Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 05-02-2018

1. Heard learned counsel for the appellant as well as learned Addl. Public Prosecutor for the State and perused the record.

2. This criminal appeal has been preferred by the sole appellant against the judgment of conviction and sentence order dated 03.09.2002 passed by the Addl. Sessions Judge FTC, Bhagalpur in Sessions case no. 371/1989 (Trial no. 201/2002) by which and whereunder he convicted the sole appellant for the offences punishable under sections 366 and 498 of the Indian Penal Code and accordingly, sentenced him to undergo rigorous imprisonment for five years under section 366 IPC and to undergo rigorous imprisonment for



two years under section 498 IPC. Both the sentences were ordered to run concurrently.

3. PW 1, namely, Mahesh Yadav gave written report to officer-in-charge of Sultanganj police station on 4.9.1986 to this effect that his marriage was solemnized with PW 3 and after marriage, she came to his house. However, after one and half month, PW 3 had gone to her parental home and while she was at her parental home, he learnt that the appellant took PW3 by alluring her and had confined her at his house. He also came to know that the sole appellant had solemnized his marriage forcibly with PW3.

4. On the basis of written report, Sultanganj P.S. case no. 202/1986 under sections 363, 366 IPC was registered and accordingly, formal FIR was drawn up for the above stated offences against the sole appellant. The matter was investigated and after investigation, charge sheet was submitted under section 366 of the IPC. Cognizance of the offence was taken and case was committed to the court of sessions in usual way.

5. The sole appellant was charged for the offences punishable under sections 366, 363 and 498 of the Indian Penal Code. The appellant denied the charges and claimed to



be tried.

6. In course of trial, prosecution examined, altogether, three witnesses and got exhibited signature as exhibit 1. The statement of the appellant was recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution story.

7. Although no evidence has been adduced by the appellant in support of his defence but from perusal of trends of cross-examination of the prosecution witnesses as well as statement recorded under section 313 of the Code of Criminal Procedure, it appears that the defence of the appellant was total denial of the prosecution story. The trial court, having relied upon testimonies of the prosecution witnesses, convicted the appellant in the manner as stated above.

8. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and sentence order arguing that learned court below has not properly appreciated the evidences available on record and moreover, in course of investigation, statement of PW 3 was recorded under section 164 Cr.P.C but the prosecution intentionally did not bring the statement of PW 3 recorded under section 164 Cr.P.C on record and when the appellant filed a petition



before the trial court on 12.8.2002 praying therein for getting exhibited the statement of victim recorded under section 164 Cr.P.C, the learned trial court did not pass any specific order and kept the aforesaid petition of the appellant pending till passing the impugned judgment of conviction and sentence order. Learned counsel for the appellant, further, submitted that, as a matter of fact, PW3 improved her statement in course of trial and her attention was drawn towards her previous statement recorded under section 164 Cr.P.C but her statement recorded under section 164 Cr.P.C was not on record. In that circumstance, the appellant could not bring the contradiction on record which has caused serious prejudice to the appellant and, therefore, on the aforesaid ground alone, the impugned judgment of conviction and sentence order is liable to be set aside. He, further, submitted that even if the evidences available on record are taken into consideration, then also, it is crystal clear that PW3 being major girl eloped with the appellant and subsequently, she was recovered on the very next date of her elopement and, therefore, in the aforesaid circumstances, appellant is entitled to get benefit of doubt.

9. On the other hand, learned Additional Public



Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that not only the informant but the victim has also supported the prosecution story and very clearly stated that she was forcibly taken away by the appellant in his house where he established physical relation with her and thereafter she was recovered by the police from the house of the appellant. He, further, submitted that the aforesaid statement of PW 3 is sufficient to convict the appellant and the trial court has rightly convicted the appellant.

10. Having heard the above stated rival contentions of both parties, I went through the record. As I have stated that only three prosecution witnesses have been examined in this case. From perusal of deposition of PW1, I find that PW 1 has admitted in his deposition that it was PW 2 who gave information to him regarding the alleged kidnapping of PW3. Similarly, PW2 says that he got information regarding kidnapping of PW 3 from his co-villager.

11. No doubt, PW3 has stated that it was the appellant who forcibly took her to his house and she was confined in the house of the appellant. She further stated that subsequently, police recovered her from the house of the



appellant but admittedly, Investigating officer, who had recovered PW3 from the house of the appellant, has not been examined in this case and moreover, statement of the victim recorded under section 164 Cr.P.C has not been brought on record even on the prayer of the defence and, therefore, I do agree with the submissions of learned counsel for appellant that due to not bringing the statement of the victim recorded under section 164 Cr.P.C on record, a serious prejudice has been caused to the appellant. Therefore, in my view, trial court has committed error in convicting and sentencing the appellant.

12. On the basis of the aforesaid discussions, this appeal is allowed and the impugned judgment of conviction and sentence order is, hereby, set aside. Appellant is on bail. He is discharged from the liability of bail bonds.

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
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Shahid

