

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.465 of 2003

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

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1. Pappu Singh, son of Shree Satrugan Singh
 2. Jagpatia Devi, wife of Late Brahmdeo Singh (since dead), resident of Sant Colony (Nepali Tola), P.S. and District Katihar

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ramanand Poddar, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 31-07-2018

Appellant No.1 has been convicted under Sections 363, 366A and 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and seven years respectively under Sections 363 and 366A IPC and also sentenced to rigorous imprisonment for 10 years under Section 376 IPC and appellant No.2 has been convicted under Sections 363 and 366A IPC and sentenced to undergo rigorous imprisonment for three years under Section 363 IPC, further sentenced to undergo rigorous imprisonment for seven years under Section 366A IPC and all the sentences were directed to run concurrently vide judgment of conviction dated 28.8.2003 and order of sentence dated 30.8.2003 passed by Sri Bidhu Bhushan Pathak, the then 2nd Additional Sessions Judge, Katihar in Sessions Trial No. 227 of 1997.

2. During pendency of this appeal, appellant No.2 Jagpatia



Devi has died and, as such the appeal against appellant No.2 stood abated vide order dated 12.4.2018.

3. Prosecution case as per complaint petition lodged by PW 6 Badal Das before the court of the Chief Judicial Magistrate, Katihar, in short, is that on 20.2.1997 when he came to his house he did not find his daughter Tusi Kumari, aged about 13-14 years and he came to know from his younger daughter that appellant Pappu Singh had taken her forcibly to show the cinema. It has further been alleged that when she did not return till night he went to police station and filed complaint stating that accused persons had kidnapped his daughter and police had asked him to search his daughter. The aforesaid complaint petition was sent for registration of FIR under Section 156(3) Cr.P.C. and on that basis, case has been registered on 9.3.1997 against Pappu Singh, Savitri Devi and Most. Jagpatiya Devi.

4. After investigation police submitted charge sheet and accordingly cognizance was taken and after commitment the case traveled to the file of Sri Bidhu Bhushan Pathak, the then 2nd Additional Sessions Judge, Katihar for trial and disposal.

5. Charges were framed in this case against the appellants under Sections 363, 366A IPC and further charge was framed against appellant Pappu Singh under Section 376 IPC.

6. In order to substantiate its case, the prosecution has examined altogether 10 witnesses, they are PW 1 Ganeshi Uraon, PW



2 Subhash Singh, PW 3 Permanand Singh, PW 4 Sitaram Rishi, PW 5 Dr. Mrs. Neelam Manish, PW 6 Badal Das, informant, PW 7 Rakesh Kumar Yadav, S.I. who has recovered the victim girl, PW 8 Urmila Das, wife of informant, PW 9 Tusi Kumar, victim and PW 10 Ganga Dayal Prasad, I.O. From perusal of evidence it appears that I.O. has recovered the girl from the house of Md. Salim on 12.4.1997 from Drivertola and at that time Jagpatia Devi was also there.

7. PW 1 is a witness on the point that he had seen the appellant and his father along with Tusi Kumari in bus and she was sitting in between them but his evidence shows that he did not enquire from them as to where they were going. PW 2 is said to be neighbour of the informant and his evidence disclosed that he had seen Tusi Kumari going along with Jagpatia Devi on 20.2.1997 at 6 P.M. in rickshaw and in another rickshaw he saw father of appellant Shatrughan Singh but his evidence also did not disclose as to whether he enquired about them as to where they were going and a suggestion was given to him that Tusi Kumari eloped with his brother Hira Singh but he has denied the suggestion. PW 3 is father of PW 2 and his evidence disclosed that he had seen Jagpatia Devi along with Tusi Kumari on rickshaw and Shatrughan Singh was in another rickshaw. His evidence also disclosed in cross examination that he did not know as to whether there was love affair between Pappu Kumar and Tusi Kumari and as to whether there was talk of marriage between them



and evidence of PWs 2 and 3 shows that informant was living in the house of Shatrughan Singh, father of appellant Pappu Singh, as tenant. Evidence of PW 4 disclosed that he came to know that Tusi Kumari had fled away along with Pappu Singh but this witness has not been declared hostile. PW 6 is informant himself and he has stated that on 20.2.1997 at 6 P.M. he did not find his daughter and he came to know that Pappu Singh had taken her to show cinema and on enquiry from mother of Pappu Singh about his daughter, she showed her ignorance. His evidence further disclosed that Subhash Singh told him that he had seen Tusi Kumari along with Jagpatiya going on a rickshaw and his daughter was recovered after one month 22 days and he also disclosed that Jagpatiya Devi had taken her away on bus stand and Tusi Kumari was boarded in a bus in which Pappu Singh was sitting and Shatrughan Singh also went with them and from Purnea Tusi Kumari was taken away to Delhi and she was subjected to rape by Pappu there in a hotel and from there she was taken to Ludhiyana and thereafter they came to Katihar. In his evidence this witness has not disclosed the age of the girl, rather from his cross examination it appears that her younger daughter was aged about 12 years and he showed his ignorance that that the girl was found at the age between 17-25 years during medical examination. In his cross examination he has stated that he did not know that for the occurrence of the same day Subhash Kumar Singh (PW 2) had lodged a case before the court of



the Chief Judicial Magistrate. This witness has also stated that he was tenant in the house of Shatrughan Singh.

8. PW 7 is on the point of recovery of Tusi Kumari. PW 8 is mother of the victim girl and she is not an eye-witness to the occurrence and she has also stated that Tusi Kumari was taken by appellant No.2. Her statement also shows that Tusi Kumari used to sleep in the house of Jagpatiya. Her evidence further disclosed that Tusi had studied up to VII standard. PW 9, the victim girl, has stated that she was taken by Jagpatiya Devi and Shavitri Devi to bus stand and Pappu Singh on the point of knife got her boarded in the bus and they both also boarded in the bus and they have taken her to Purnea and from there they had gone to Delhi, stayed in a hotel where Pappu had committed rape on her and thereafter she was taken in a rented house where also she was subjected to rape. She on production of letters (Exts A-A/11) has stated that letters were written by her. Her evidence in cross examination disclosed that Baldeo Munsî and Jagpatiya Devi had brought her to Katihar and from Katihar Railway Station they had taken her to the house of Baldeo Munsî.

9. PW 5 is Doctor in this case, who had examined the girl and her medical dental report shows that 28 teeth present, X-ray was not done as X-ray plate was not available at Sadar Hospital, therefore opinion regarding the age was reserved. Her evidence further disclosed that she was habitual in sexual intercourse and in her cross



examination she has stated that third molar teeth appears between the age of 17 to 25 years.

10. Defence of the accused is that there was love affair between appellant Pappu Singh and Tusi Kumari and she had gone on her own sweet will and married with Pappu Singh and in support of its contention defence had produced letters purported to have written by Tusi Kumari as Exts. A-A/11.

11. Learned trial court on conclusion of trial has convicted the appellants under Sections 363, 366A and 376 IPC and sentenced them as stated above.

12. Learned counsel for the appellant has assailed the judgment on the ground that whole prosecution case clearly shows that there was love affair between appellant Pappu Singh and Tusi Kumari and Exts. A to A/11 have been identified by the victim Tusi Kumari in her evidence and medical report shows that she was major at the time of occurrence and opinion of doctor was that she was habitual in sexual intercourse, as such the conviction under Sections 363, 366A and 376 IPC is not sustainable in the eye of law. Further submission is that there is delay of four days in lodging the complaint petition and the complainant in his evidence disclosed that witnesses had seen Tusi Kumari going along with Jagpatiya Devi and Pappu Singh and father of Pappu Singh and that also creates doubt about the prosecution case and in spite of the aforesaid inconsistencies learned



trial court has convicted the appellant under Section 376 and other sections of the Indian Penal Code.

13. On the other hand, learned counsel for the State has supported the judgment of conviction on the ground that PW 9 is the victim in this case and she has supported the prosecution case that she was forcibly taken by the appellant at different places and was subjected to rape and aforesaid evidence has been corroborated by her statement recorded under Section 164 Cr.P.C. and she was minor and as such the conviction of the appellant under Sections 363, 366A and 376 IPC is just and proper and does not require any interference by this Court.

14. Having heard both sides and from the discussions made above it appears that admittedly occurrence took place on 20.2.1997. However, complaint petition was filed on 24.2.1997 and case was registered on 9.3.1997. The evidence further disclosed that informant was knowing well that victim girl was taken by Pappu Singh and his grandmother but in spite of that no step was taken for lodging FIR. Further it appears that PW 1 claims to have seen the victim along with appellant Pappu Singh and his father but evidence does not disclose that as to whether he enquired as to where they were going and similarly PWs 2 and 3 claim to have seen Jagpatiya Devi along with Tusi Kumari but they had also not enquired about Tusi Kumari as to where they were going. Admittedly informant was tenant of



Shatrughan Singh, father of appellant Pappu Singh and in such a situation, there is evidence that they saw victim going along with Jagpatiya Devi does not inspire confidence, as it is natural conduct of the witnesses to enquire from the victim, as to where she is going. On the other hand, the evidence of PW 9, who is victim girl in this case, disclosed that letters were written by her and she had proved the same as Exts. A to A/11 and she had also identified her photographs along with Pappu Singh and in such a situation, possibility of love affair between victim and Pappu Singh cannot be ruled out. Moreover, conduct of the victim that she had traveled along with appellant to Purnea, Delhi, Ludhiana and there is nothing in her evidence that she raised alarm or tried to inform people about her kidnapping, rather evidence of PW 9 shows that she was brought back with Jagpatiya Devi and Baldeo Munsu and they had brought her from Ludhiana to Katihar and she was recovered from the house of Md. Salim. Md. Salim has also not been examined in this case. For conviction under Section 366A IPC prosecution has to prove that she was minor at the time of alleged kidnapping, rather evidence of Doctor suggests that she was aged 17-25 years. Evidence of witness shows that she studied up to VII standard but no document has been brought on record to prove that she was minor. It is needless to say that prosecution has to prove its case beyond all reasonable doubts. The prosecution has not brought any clinching evidence to prove that she was minor, rather



conduct of the girl shows that she had written several letters to appellant Pappu Singh, which will appear from Exts. A to A/11, which she recognized, and that shows that she was consensual along with going to appellant Pappu Singh, she appears to be major and all the circumstances create doubt about prosecution case and in such a situation the appellant is entitled to benefit of doubt.

15. Considering the discussions made above, to my opinion, the appellant is entitled to benefit of doubt in this case.

16. Accordingly, this appeal is allowed and 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 liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

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