

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.13 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- LAKHISARAI

[Against the judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed the Additional Sessions Judge, FTC-II, Lakhisarai, in Sessions Case No.465 of 2007 arising out of Lakhisarai P.S. Case No.109 of 2005]

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Chandan Kumar @ Chandan Kumar Singh, son of Pramod Singh, resident of village-Sarma, P.S. & District-Lakhisarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 82 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- LAKHISARAI

[Against the judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed the Additional Sessions Judge, FTC-II, Lakhisarai, in Sessions Case No.465 of 2007 arising out of Lakhisarai P.S. Case No.109 of 2005]

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Gautam Kumar, son of Ashok Singh, resident of village-Kaithma, P.S.-Sheikhpura (Sigri), District-Sheikhpura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 125 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- LAKHISARAI

[Against the judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed the Additional Sessions Judge, FTC-II, Lakhisarai, in Sessions Case No.465 of 2007 arising out of Lakhisarai P.S. Case No.109 of 2005]

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Mukesh Singh, son of late Bilash Singh, resident of village-Sarma, P.S.-Lakhisarai,



District-Lakhisarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.13 of 2009)

For the Appellant/s : Mr. Arun Kumar, Advocate
Mr. Ram Vinay Pd. Singh, Advocate

For the Respondent/s : Dr. Rabindra Kumar, APP

(In CR. APP (SJ) No.82 of 2009)

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate
Mr. Shivendra Kumar Sinha, Advocate

For the Respondent/s : Dr. Rabindra Kumar, APP

(In CR. APP (SJ) No.125 of 2009)

For the Appellant/s : Mr. Shivendra Kumar Sinha, Advocate

For the Respondent/s : Dr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 24-04-2018

By judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed by the Additional Sessions Judge, FTC-II, Lakhisarai, in Sessions Case No.465 of 2007 arising out of Lakhisarai P.S. Case No.109 of 2005, all the appellants have been convicted for the offence under Section(s) 366-A Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years with fine of rupees five thousand each and in default of payment of fine to further undergo rigorous imprisonment for one year each.

2. Case has been registered on the basis of written report of Triveni Singh levelling allegation that his daughter, Munni Kumari, aged about 16 years, used to go to see TV in the house of



Mukesh Singh. Gautam Singh, relative of Mukesh Singh, also used to reside in that house for last 5-6 months. On 12.04.2005, daughter of the informant had gone to see TV in the house of Mukesh Singh, but did not return. The informant made search then learnt that his daughter has been kidnapped by Mukesh Singh and Gautam Kumar.

3. The police after investigation submitted charge-sheet against the accused persons, namely, Mukesh Singh, Gautam Kumar and Chandan Singh.

4. The Court below after trial has convicted all the three appellants for the offence under Section(s) 366-A Indian Penal Code and sentenced them in the manner aforementioned.

5. Prosecution has examined, in all, six witnesses in the case.

6. Victim, Munni Kumari, has been examined as PW 4. She has stated in her examination-in-chief that on the date of occurrence she had gone to see TV in the house of Mukesh Singh at the request of mother and wife of Mukesh Singh. Mukesh, Chandan, Gautam, Usha, Sushila, Reena, Sona and Rupam etc. were present in the house at the time of watching TV. She has further stated that during watching of TV, Mukesh, Gautam and Chandan, gave her *Daalmot* to eat. She became unconscious after taking the same. She regained sense in the house of *Fuaa* of Gautam in village Nandnama.



Mukesh and Chandan told her to perform marriage with Gautam, which she refused. Thereafter, Mukesh, Chandan and Gautam brought her to the house of Gautam in village Kaithama. From there, they took her to Sheikhpura Bazaar. Gautam performed marriage with her in a Studio in Sheikhpura Bazaar and got photographed after giving vermillion on her head. Thereafter, he took her to Ranchi. She was returning from Ranchi to Balia with Gautam. She saw the police at Balia and raised *halla*. The police apprehended this witness along with Gautam and telephoned to her house in Lakhisarai. Lakhisarai police came and brought her with him to the Court and from there she returned to her house.

7. In cross-examination, the victim has stated that she does not remember the date on which she reached at Sheikhpura Studio, but she had gone to Studio between 9-10 PM in the night. She had gone to Ranchi from Sheikhpura on Marshal vehicle. She does not know the name of the Driver of Marshal vehicle. She does not know where she was kept in Ranchi. She again stated in her cross-examination that she was kept in the house of some relation of Gautam. She does not remember as to by what time she reached Ranchi. She was brought from Ranchi to Balia sometime by train and sometime by Marshal vehicle. When police apprehended, she was on Marshal. The police did not seize the Marshal vehicle. The



police apprehended Gautam. She had gone from the house of Mukesh in unconscious state. She found herself in Nandnama village after getting sense. Time was 2.00 AM in the night. She has stated in her cross-examination that vermilion was given on the head in Studio. Mukesh, Chandan and Gautam were present at that time. Photograph was taken by the people in Studio. She did not resist at the time of giving vermilion on her head. She has stated her age as 19 years in Court. The Court has assessed her age as 20 years at the time of her evidence.

8. Dr. Prem Lata, PW 5, is the Medical Officer, who examined the victim on 27.04.2005 at 12 noon. She did not find any injury or sign of intercourse during her medical examination. She has proved the Injury Report, which has been marked as Ext.1. This witness has stated that age of the victim was assessed as 16-17 years. She has stated in para 3 of her cross-examination that all the 32 teeth comes out between 17-25 years of age. This witness has found all the 32 teeth in mouth of the victim. She has come to the conclusion about the age of the victim between 16-17 years after examining her teeth and also radiological tests.

9. Santosh Kumar, PW 1, is cousin brother of the victim. He has stated that he was in the house at 9.00 PM on the date of occurrence. Sushila Devi, Sona Devi, Reena Devi had come to



call her cousin sister, Munni Kumari, to watch TV in her house, but she did not go. Thereafter, Chandan and Mukesh came and made request and Munni went with them. He went to call his sister in the house and found Mukesh, Devi Singh, Sushila Devi, Reena Devi, Usha Devi and Rupam Kumari sitting in the room. He had requested Munni to accompany him then Mukesh told that he will bring her within ten minutes. This witness returned to home. Munni did not return and then he again went after one hour and found nobody in the house. House was locked. All the persons had fled away. He learnt in the morning that his sister had been kidnapped by Gautam, Chandan, Mukesh with intention of her marriage. His sister was recovered on 16.04.2005 by Balia police. From the evidence of this witness, it is apparent that he has not seen from his own eyes the kidnapping of his sister by the accused persons. He has stated in his examination-in-chief that when he went to the house, he found his sister sitting there with the accused persons. He again went to the house after one hour and did not find his sister and house was locked. He learnt in the morning that Chandan, Mukesh and Gautam have kidnapped his sister with intention to marry.

10. Ram Pukar Singh, PW 2, is *Gotiya* of the victim girl. He has stated that on 12.04.2005, he was sitting on the bungalow of Triveni Singh. Sushila Devi and Reena Devi came to



the house of Triveni Singh and took Munni Kumari to watch TV in their house. Thereafter, this witness went to his house to take dinner. When he was returning to his house after taking dinner, Santosh Singh was enquiring from the villagers about Munni Kumari. He went to the house of Mukesh Singh and found the house locked. All the accused persons had fled away.

11. From the evidence of this witness also, it appears that he is not an eye witness to the occurrence of kidnapping. This witness has stated in his evidence that when Munni Kumari returned, then she told him about the occurrence. She told that while watching TV, accused persons gave *Daalmot* and she became unconscious. Thereafter, he stated the story as narrated by Munni Kumari in her evidence. This witness in para 23 and 24 of the cross-examination has stated that he did not see the accused persons taking away Munni Kumari.

12. Pintu Kumar, PW 3, is also cousin brother of the victim. He has stated in his evidence that on the date of occurrence at about 9.30 PM, he was reading in his *Angaan* in lantern. He saw Mukesh, his mother and wife called Munni to see TV. He later learnt that Gautam, Chandan and Mukesh had taken Munni in Nandnama village with intention to marry her. Thereafter, Chandan took Munni Kumari to village Kaithama and from their Chandan, Gautam and



Mukesh took Munni Kumari to Ranchi. Gautam performed marriage with Munni Kumari forcibly in Sheikhpura in a Studio. Chandan, Mukesh and Gautam brought Munni from Ranchi to Shahpur village. The police recovered Gautam and Munni from Shahpur village.

13. As such, from the evidence of this witness also, it appears that he is not eye witness to the occurrence of kidnapping. This witness has stated in his cross-examination that at the time of occurrence, Munni Kumari, was student of Class X. Only Munni Kumari and her mother were in the house when the accused persons came to call her to watch TV. Munni Kumari did not use to go to the house of Mukesh Kumar very often. This witness has stated that he has seen Munni Kumari going to the house of accused to see TV.

14. Triveni Singh, PW 6, is the informant of this case. He has stated that occurrence is of 12/13.04.2005 at 9 pm. Wife of Mukesh took Munni Kumari to her house to see TV. This witness was not present at that time. He learnt about the occurrence from nephew Santosh Singh and Pintu Singh. This witness has stated in para 9 of his cross-examination that he has come to the house on the next date of occurrence. He was out of the house since last four days from the date of occurrence. As such, from the evidence of this witness, it appears that he was not present at the time of occurrence. This witness has stated in para 7 of his cross-examination that in the



night of occurrence his wife was also not in the house. She was in her *Naihar*. His son was also not in the house.

15. Two witnesses have been examined on behalf of the defence, namely, DW 1, Shankar Chouhdary, and DW 2, Pappu Kumar.

16. DW 1, Shankar Choudhary, has denied kidnapping of Munni Kumari by the accused persons. This witness has stated in his evidence that informant, Triveni Singh, wanted to marry his daughter, Munni Kumari, with Gautam Kumar, after taking money, which was protested by Mukesh Kumar and, therefore, all these appellants have been implicated in this case.

17. DW 2, Pappu Kumar, has also denied kidnapping of Munni Kumari by the accused persons. He has stated that Munni Kumari has already been married. He does not know where she has been married.

18. Main defence of the accused is that informant wanted to marry his daughter, Munni Kumari, with Gautam, who was handicapped, after taking money, which was opposed by other two accused persons. Informant performed marriage of Munni Kumari to some different place after taking money and has falsely implicated these appellants in this case. Mother and sister of the victim girl were not produced in the Court below for their evidence.



It appears from the evidence that there is no eye witness in the case. Investigating Officer has also not been examined in this case.

19. From perusal of the evidence, as discussed above, in detail, it appears that besides victim, Munni Kumari, there is no other eye witness in the case. The Doctor did not find any injury or sign of intercourse during her medical examination. The Doctor has assessed the age of the victim to be between 16-17 years. Doctor has also stated in her evidence that she found all the 32 teeth of the victim in her mouth. There are contradictions in the evidence of the witnesses. The victim and other witnesses have stated that mother of the victim was present in the house, but father of the victim, Triveni Singh, who is informant of this case, (PW 6) has stated on the date of occurrence his wife was in the *Naihar*. The informant has stated in his evidence that he was not present in the house at the time of occurrence. He learnt about the occurrence from his nephew, Santosh Singh (PW 1) and Pintu Singh (PW 3), but these witnesses are not the eye witnesses in the case. They have stated during cross-examination that they have not seen the accused persons kidnapping the victim.

20. From the evidence of the victim, namely, Munni Kumari, it appears that she has stated that accused persons gave her *Daalmot* when she was watching TV and became unconscious.



Thereafter, they have brought her to Nandnama village in the house of *Fuaa* of Gautam where she gained consciousness. Accused Mukesh and Chandan told her to marry with Gautam, which she refused. Thereafter, they brought her to Sheikhpura and performed marriage with Gautam. Gautam gave vermillion on her head and also got photographed. After performing marriage, she was taken to Ranchi by all the three accused persons. She was returning to Balia from Ranchi after 4-5 days with Gautam. She raised *halla* on seeing the police. The police apprehended the victim with Gautam.

21. In this manner, from the evidence of the victim itself, it appears that she stayed with the accused persons for several days after regaining the sense, as stated in her examination-in-chief, but she never raised any *halla* or objection at any stage of time. It is said that she was taken to Sheikhpura where Gautam performed marriage by giving vermillion on her head and also got photographed, but she did not raise any objection in the Studio. Besides this, there is contradiction also in her evidence with regard to taking her to Ranchi and Balia by the accused persons by Car. She has stated that she was taken to some distance by Car and some distance by train. She could not say the time and different places and the time during which she has performed journey.

22. Therefore, on the basis of such evidence, this



Court is of the view that prosecution has not been able to substantiate the Charge against all these appellants beyond all reasonable doubts.

23. Therefore, all the appellants are acquitted of the charge under Section 366-A Indian Penal Code. They are discharged from the liabilities of their respective bail bonds.

24. The impugned judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed by the Additional Sessions Judge, FTC-II, Lakhisarai, in Sessions Case No.465 of 2007 arising out of Lakhisarai P.S. Case No.109 of 2005, is hereby set aside.

25. These Criminal Appeals are, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	16-02-2018
Uploading Date	29-04-2018
Transmission Date	29-04-2018

