

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.68 of 2009

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

[Against judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC II, Katihar, in Sessions Trial No.97 of 1999 arising out of Katihar Town P.S. Case No.520 of 1998.]

- =====
1. Ghanshyam Sah @ Ghanshyam Prasad Sah, son of Jageshwar Sah, &
 2. Dhananjay Kumar Sah, son of Ghanshyam Sah, both resident of PHED Colony, Mirchai Bari, Katihar, P.S.-Katihar, Distirct-Katihar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ram Swarup Prasad, *Amicus Curiae*

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 30-08-2018

None appeared on behalf of the Appellants on repeated calls.

2. Sri Ram Swarup Prasad, Advocate, is appointed as *Amicus Curiae* to assist the Court on behalf of the Appellants.

3. Heard learned *Amicus Curiae* and learned APP.

4. By judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC II, Katihar, in Sessions Trial No.97 of 1999 arising out of Katihar Town P.S. Case No.520 of 1998, both the Appellants have been convicted under Section 366-A Indian Penal Code and sentenced to



undergo rigorous imprisonment for seven years with fine of rupees five thousand each and in default of payment of fine to further undergo rigorous imprisonment for one year.

5. Case of the prosecution as per written report of the informant is that on 03.12.1998 at about 2.00 PM his daughter Neelam Kumari, aged about 13 years and his niece, Anita Kumari, aged about 14 years, had gone to house of their friend Renu Kumari, but not returned till 4.00 PM. The informant started making search. The informant apprehended that since accused Dhananjay Sah used to threaten him of dire consequences, he had kidnapped both the girls.

6. The prosecution during trial has examined eight witnesses in the case. PW 1, Pramod Kumar Rai, has been declared hostile.

7. Both victims have been examined as PW 3 and PW 4. PW 3, Anita Kumari, has stated that while she had gone to the house of her friend, Renu, with her sister Neelam and was returning to the house, she met one woman in the field, who told them that her daughter is missing and asked for help from them in searching of her daughter. In course of searching, both the girls came at Michaibari Chowk where accused Dhananjay Sah was present. She along with unknown woman and victim girls came at station on Tempo where Ghanshyam Sah was talking with another



person. All the accused persons asked both the girls to sit in the train. They gave gram to eat and thereafter they became senseless. The victim got her sense in the morning. The train was stopped at Basti Station. The victim has stated that in the bogie unknown woman and male were present, who were sleeping. The victim got down from the bogie. The police personnel saw her at the station and enquired about her whereabouts. Thereafter, victim returned to her home with the help of police personnel.

8. Similarly, PW 4, Neelam Kumari, has stated that she met with one unknown woman in the field who told that her daughter is missing and made request to help her in searching her daughter. In course of search, Appellant, Dhananjay Sah came and took the victims to railway station where accused Ghanshyam Sah was present and was talking to another person. All of them boarded the train. Accused gave gram to the victim girls to eat and after eating gram she became senseless. When she got her sense, she found that train had stopped at Basti Station. She came down from bogie. GRP found them and with the help of police personnel she returned to her house at Katihar.

This witness has stated in her cross-examination that both the accused Ghanshyam Sah and Dhananjay Sah are known to her.

9. PW 7, Lakshmikant Kamath, is the informant of



the case. He has deposed that at about 4.30 PM when he returned to his house, he got knowledge of missing of his daughter and niece and further got knowledge that they had gone to the house of friend Renu Kumari. In course of search, he had gone to the house of Renu Kumari and got knowledge that they had come at her place and returned. Thereafter, during search, he suspected involvement of these Appellants because Dhananjay Sah used to threaten him of dire consequences.

10. PW 2, Mahabir Kamath, is father of one of the victim, Anita Kumari. He has stated that when he returned to his house at 5.00 PM, he got knowledge of missing of his daughter and niece Neelam Kumari. On enquiry, he got knowledge that one woman had taken both the girls before Dhananjay Sah, who was on Tempo. Thereafter, all of them had gone to railway Station where Ghanshyam Sah along with one unknown person was present. They had given gram to the victims to eat and thereafter both became senseless. Both victims returned on 06.12.1998 with the help of police personnel.

11. PW 5, Shambhu Nath Jha, has stated in his evidence that he got knowledge at 4.00 PM that accused persons have kidnapped the victim.

He has stated in his cross-examination that search was made but victim girls were not found. He has further stated in



his cross-examination that victims returned to the house after four days of the alleged occurrence.

12. PW 6, P. K. Jha, has stated that Appellants had kidnapped the victim girl.

13. PW 8, Basudeo Sah, is the Investigating Officer of the case. He has recorded further statement of the informant and also recorded statement of the witnesses after getting charge of the investigation. He has stated that he inspected place of occurrence. On 06.12.1998, both the victim, Neelam and Anita, returned. He recorded statement of both the girls, who had stated that they had come with the help of police personnel at Basti Station where they got down from the train.

In cross-examination, he has stated that he has not got conducted medical examination of both the victim girls. He did not take steps for recording statement of the victim under Section 164 Cr. P. C.

14. No defence witness has been examined in the case.

15. Defence of the Appellants is that they have been falsely implicated in the case.

16. From the entire evidence of the prosecution, it appears that besides the victim girls i.e. PW 3 and PW 4, none are the eye witness of the case. Other witnesses are hearsay witness.



Victim girl PW 3 and PW 4 have not stated in their evidence in Court that these Appellants have seduced them to go away from their house for illegal purpose. From the evidence of both the victim girls, it appears that they have not raised any objection at any point of time while traveling with Appellants in Tempo as well as in train. PW 4 has stated in her cross-examination that both Appellants were known to her from before.

17. The necessary ingredients of offence under Section 366-A Indian Penal Code is of inducing any minor girl with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.

18. In the instant case, there is no such evidence that both the girls were induced with intent that they may be forced or seduced to have illicit intercourse with any person. The victim girls have nowhere stated that these Appellants have induced her to go from any place or to do any act with intent that she may be forced or seduced to illicit intercourse. It further appears that both the Appellants are father and son.

19. This Court finds that both the victim girls i.e. PW 3 and PW 4 have stated in their evidence that they had gone with one unknown lady to search her missing daughter. Thereafter, they met with the Appellants at station. They boarded the train with unknown lady. They became senseless after eating gram which was



given by the Appellants. They got sense in morning at Basti Railway Station. They got down from the train at the Basti Railway Station and met police personnel. They returned home with the help of police personnel.

20. Therefore, this Court, on the basis of aforesaid evidence, finds that prosecution has failed to substantiate the charge against Appellants for the offence under Section(s) 366-A Indian Penal Code.

21. In view of such, impugned judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC II, Katihar, in Sessions Trial No.97 of 1999 arising out of Katihar Town P.S. Case No.520 of 1998 is hereby set aside. Both the Appellants are acquitted of the charges levelled against them. They are discharged from the liabilities of their respective bail bonds.

22. This Criminal Appeal is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-09-2018
Transmission Date	11-09-2018

