

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.101 of 2013

Arising Out of PS. Case No.-574 Year-2009 Thana- ARARIA District- Araria

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Jagdish Chauhan, S/o Lalu Pd. Chauhan, R/o Village-Gariya Baluwa, P.S.-K.
Nagar, District-Purnia.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramesh Kumar Singh
		Mr. Sanjay Kumar Singh
For the Respondent/s	:	Mrs. Abha Singh (App)

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 25-10-2018

Heard learned counsel for the appellant and
learned APP for the State on this Criminal Appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 18.07.2012 and order
of sentence dated 23.07.2012 passed by learned Adhoc
Additional Sessions Judge-IV, Araria in Sessions Trial no. 812
of 2010, Trial No. 52 of 2010/ 89 of 2012 arising out of
Bairgachhi P.S. Case No. 574 of 2009 whereby the learned
trial court convicted the accused, Jagdish Chauhan for the
offence punishable under Sections 506, 366(A)/ 511 of the
Indian Penal Code and sentenced him to undergo R.I. for five
years and also slapped him with a fine of Rs. 3000/- and in
case of default of payment of fine to further undergo S.I. for
three months under Sections 366 (A)/ 511 of the Indian Penal



Code and also sentenced him to undergo S.I. for two years under Section 506 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that Bairgachhi P.S. Case No. 574 of 2009 was instituted under Sections 420, 467, 468, 471, 384 and 366(A)/ 511 of the Indian Penal Code against accused Jagdish Chauhan on the basis of written report of Jeevchhi Devi W/o Kamal Dev Yadav dated 14.12.2009 with the allegation, in succinct that the accused Jagdish Chauhan put his bad eye on her minor daughter namely, Priyanka Kumari aged about 15 years in the course of visiting the court in connection with a case. Taking undue advantage of gullibleness of the informant and her husband, he obtained photographs of the informant and her daughter Priyanka Kumari during the course of visiting the court and on the basis of said photographs got manufactured the forged documents and started mounting pressure upon her for marriage of her daughter with him and also lodged a false and frivolous case against the informant and her family members and getting news of his marriage with her daughter published in the newspaper, compelled her to get her daughter married with him. Succumbing his pressure, she sent her



daughter to the in-law's house of her elder daughter located at village Bochi, but the accused anyhow traced out her whereabouts and arrived at the aforesaid house on 14.12.2009 at 02:00 PM and tried to kidnap her minor daughter with intent to perform marriage with her displaying the photographs and forged affidavit regarding marriage. On protest made by her daughter, the locals congregated there, then the accused made good his escape extending threatening of kidnapping her daughter. The accused is having criminal antecedent and has also gone to the jail for forcibly marrying with another girl namely, Rani Devi.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet under Sections 420, 468, 471, 506, 366(A)/511 of the Indian Penal Code against the aforesaid accused.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the learned Adhoc Additional Sessions Judge-IV, Araria for trial.

6. Charge against the aforesaid accused was



framed under Sections 506, 366(A), 420, 468 and 471 of the Indian Penal Code. Charge was read over and explained to the accused by the court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether four prosecution witnesses namely, Ramanand Yadav as PW-1, informant Jeevchhi Devi as PW-2, Niyaz Ahmad as PW-3 and victim Priyanka Kumari as PW-4. In documentary evidence, the prosecution has filed and proved written report in the case.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has also examined three witnesses, namely, Sakal Dev Chauhan as DW-1, Manoj Kumar as DW-2, and Sanjeev Chauhan as DW-3 in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the



aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that the appellant was pre-acquaintance to the victim and was having visiting term to the victim. The victim has developed love affair with him and also performed marriage with him and as the informant and her family members has detained the victim and did not perform her *Bidai* with the appellant, the appellant has lodged a case against the victim and her family members preceding the case under hand and in a bid to mount pressure upon the appellant to get the aforesaid case compromised, the informant has lodged this false and frivolous case against the appellant. It is further submitted that PW-2 does not happen to be eye witness of the occurrence while PW-1 and PW-3 happen to be co-villager of the *Samdhi* of the informant and are own man of the informant. It is further submitted that PW-1, PW-3 and the victim PW-4 had not supported the occurrence of extending threatening of



kidnapping the victim by the appellant. It is also submitted that the written report on the basis of which the FIR has been lodged is anti-dated and creates serious doubt about the prosecution case. It is further submitted that Dev Narayan Yadav at whose house the victim was residing at the time of occurrence, has not been examined by the prosecution and no plausible and convincing explanation has been assigned by the prosecution for non-examination of the aforesaid witness. Hence, adverse inference shall be drawn against it. It is also submitted, that the I.O. has not been examined by the prosecution and for non-examination of the I.O. great prejudice has been caused to the defence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing convincing, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the victim has



supported the occurrence in toto and other witnesses have also corroborated the aforesaid occurrence and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record it appears that to substantiate its case the prosecution has examined four material witnesses of the case. Out of the aforesaid witnesses, PW-2 Jeevchhi Devi happens to be mother of the victim. Though, PW-2 has made an abortive bid to support the prosecution case deposing in consonance to the prosecution case, claiming herself to be eye witness of the occurrence, but from perusal of testimony of the victim PW-4 Priyanka Kumari, it appears that PW-2 does not happen to be eye witness of the occurrence as PW-4 has stated in paragraph 33 of her cross-examination that Dev Naryan Yadav gave information of teasing her (PW-4) by the accused to her mother on 15.12.2009 and called her, then her mother gave information of the occurrence to the police at the Police Station. The aforesaid statement of the victim candidly indicates that her mother was not present at the place of



occurrence at the time of occurrence rather she was called there by her *Samdhi* Dev Narayan Yadav informing her about teasing the victim by the appellant.

15. Though, PWs- 1, 3 and 4 have supported the offence of attempt of kidnapping of the victim by the appellant by deposing in their respective examination-in-chief in consonance with the prosecution case, but from perusal of their testimony, it appears that they have not whispered about extending threatening by the appellant of kidnapping the victim at the time of occurrence. It is the case of the prosecution that the appellant made an attempt to kidnap minor daughter of the informant from the house of *Samdhi* of the informant, namely, Dev Narayan Yadav and PWs- 1, 2, 3 and 4 have also stated in consonance with the aforesaid prosecution case in their respective examination-in-chief. But, victim PW-4 has stated in paragraph 33 of her cross-examination that Dev Narayan Yadav had given information to her mother on 15.12.2009 regarding teasing her by the appellant Jagdish Chauhan. The aforesaid statement of the victim completely rules out the aforesaid allegation of attempt of kidnapping the victim by the appellant and creates serious doubt about the credibility of aforesaid witnesses and



prosecution case. As as per the aforesaid account of the victim, the appellant appears to have only teased the victim at the time of occurrence and had not made any attempt to kidnap her or extended threatening of he kidnapping.

16. From perusal of the written report, it appears that the aforesaid written report was scribed by Dev Narayan Yadav on 14.12.2009, but the victim PW-4 has stated in paragraph 33 of her cross-examination that Dev Narayan Yadav had called her mother giving information of teasing her by the accused Jagdish Chauhan on 15.12.2009 and then her mother had rushed to the police station and gave information at the Police Station. The aforesaid statement of the victim creates serious doubt about the aforesaid written report and prosecution case due to following reasons. Firstly, as per the statement of the victim her mother had arrived on 15.12.2009 at the place of occurrence on the call of Dev Narayan Yadav and had rushed to the Police Station and informed the matter to the police at the Police Station. But, the aforesaid written report which is of 14.12.2009 bears LTI of the informant which means that the said written report is anti-dated. Secondly, as per the statement of the victim, her mother gave information to the police at the Police Station regarding the



occurrence of teasing her by the accused. In the said paragraph, she has not stated about lodging of the written report by the informant regarding the occurrence of attempt of kidnapping etc. getting the same scribed by Deo Narayan Yadav while aforesaid written report which has been made the basis of the FIR is regarding the offence of kidnapping etc. and not teasing the victim by the appellant. Thirdly, as per the statement of the victim as given by her in paragraph 30 and 33 of her cross-examination, her mother had given information of the occurrence at the Police Station on 15/12/2009 at 05:00 PM while the occurrence is of 02:00 PM, but from perusal of the FIR, it appears that the information of the occurrence was given at the Police Station on 15.12.2009 at 01:40 PM i.e. preceding to the occurrence and giving information of the occurrence by the informant at the Police Station. Fourthly, as per the account of the victim as given by her in paragraph 30 and 33 of her cross-examination the occurrence is of 02:00 PM on Monday and her mother had given information to the Police at 05:00 PM on 15.12.2009 on giving information to her by Dev Narayan Yadav calling her at the place of occurrence. The aforesaid statement of the victim goes to indicate that the offence is of 15.12.2009 at 02:00 PM,



but in the written report the occurrence is said to be of 14.12.2009 at 02:00 PM.

17. As per the prosecution case, the informant had sent the victim to the house of her *Samdhi* Dev Narayan Yadav (Father-in-law of her elder daughter), at village Bochi where the aforesaid occurrence took place and PW-1, PW-2, PW-3 and PW-4 have also unanimously stated about the commission of the occurrence at the house of Dev Naryan Yadav located at village Bochi. But, in quite contradiction to the aforesaid prosecution case and account of the witnesses, the victim has stated in paragraph 30 of her cross-examination that accused Jagdish Chauhan had committed the occurrence against her on Monday at Madanpur. The aforesaid statement of victim completely changed the place of occurrence and rules out the aforesaid prosecution case and create serious doubt about the credibility of the aforesaid witnesses.

18. The victim has entirely changed the place of occurrence and I.O. of the case has not been examined by the prosecution to prove the place of occurrence. Thus, the place of occurrence does not stand established by the prosecution.

19. The informant PW-2 Jeevchhi Devi has stated in paragraph 22 of her cross-examination that the accused



Jagdish Chauhan had lodged the case against her and her daughter Priyanka on 21.07.2009. In paragraph 25 of her cross-examination, she has further stated that the aforesaid case was numbered as Bairgachhi P.S. Case No. 408 of 2009 and Priyanka, Dev Narayan Yadav, Vikas Yadav and she were summoned at the Police Station in connection with the said case, but they were released after grilling. In paragraph 26 of her cross-examination she has also stated that she had met accused Jagdish Chauhan to get the aforesaid Bairgachhi P.S. Case No. 408 of 2009 compromised. PW-4 Priyanka Kumari has also stated in paragraph 16 of her cross-examination that Jagdish Chauhan had lodged a case against her mother, brother-in-law (Behnoi) and others. In paragraph 25 of her cross-examination, she has further stated that Officer in-charge of P.S. Bairgachhi, namely, Lallan Paswan had visited her house twice in connection with the case lodged by Jagdish Chauhan. The aforesaid statement of the said witnesses indicates that the appellant had lodged the case against the informant, Dev Narayan Yadav, victim and others preceding to the case under hand and the informant wanted to get the aforesaid case lodged by the appellant compromised. Thus, there appears to be animosity between both the parties



in the case. Though, animosity cuts both the edges, but in view of aforesaid contradiction between lodging of the FIR, time of giving information to the Police Station, time of occurrence, manner of occurrence, place of occurrence, not establishing of place of occurrence false implication of the appellant due to the aforesaid animosity cannot be ruled out.

20. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court against the appellant is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

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