

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.125 of 2013

Arising Out of PS. Case No.-8 Year-2012 Thana- WEST CHAMPARAN GRP CASE
District- West Champaran

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Jivan Kumar Sampang, S/o Jitbat Sampang @ Jit Bahadur Sampang
Resident- Suswa, Ward No.6, P.S- Chainpur, District- Dhankuta (Nepal)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae.
For the Respondent/s : Mr. Z. Hoda, APP.

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

ORAL JUDGMENT

Date : 05-11-2018

Heard Mr. Prince Kumar Mishra, learned Amicus
Curiae and learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction and sentence dated 20.12.2012 passed by Adhoc Additional Sessions Judge-III, West Champaran, Bettiah in Sessions Trial No. 325 of 2012 arising out of Raxaul (Rail) P.S. Case No. 08 of 2012, whereby the learned trial court convicted the accused Jivan Kumar Sampang for the offence punishable under Section 5 of the Immoral Traffic (Prevention) Act, 1956 and sentenced him to undergo R.I. for three years and six months and also slapped him with the fine of Rs. 2000/- and in case of default of payment of fine to further undergo S.I. for one month under the



aforesaid Section.

3. Factual matrix of the case is that Raxaul (Rail) P.S. Case No. 8 of 2012 was instituted under Sections 4/5 of the Immoral Traffic (Prevention) Act, 1956 against the accused Jivan Kumar Sampang and Prakash Choudhary on the basis of written report of Suman Kumar Paswan, Secretary, Dalit Mahila Jan Kalyan Sansthan with the allegation in succinct that on 29.04.2012 at around 08:05 AM, he along with his volunteer namely Babita Purasaini was imparting advice to the commuters of Satyagrah Express Train at Raxaul Railway Station regarding safe journey in the train. In the meantime, they spotted a girl namely Sarita Sah sitting between two persons in the suspected condition in a general bogie of the train. Sarita Sah disclosed the name of one of the persons as Jivan Kumar Sampang and also divulged that he had asked her to send her to Kuwait to earn money and on her disclosure that she was not having passport, VISA and necessary certificates of the Nepal, he had assured her to get her passport, VISA and other documents prepared within 4-5 days at Delhi and send her to Kuwait. On grilling the aforesaid two persons, they disclosed their names as Prakash Choudhary and Jivan Kumar Sampang. On quizzing by Babita Purasaini, she also divulged her that the



aforesaid accused persons are taking her to Delhi by Satyagrah Train to send her to Kuwait by hoaxing. Then aforesaid three persons were got alighted from the train and taken to G.R.P. police station.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused persons, namely, Jivan Kumar Sampang and Prakash Choudhary under Sections 376/177 of the Indian Penal Code and Sections 4/5 of the Immoral Traffic (Prevention) Act, 1956.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid two accused persons namely Jivan Kumar Sampang and Prakash Choudhary and committed the case to the court of sessions and after commitment and on transfer finally the case came in the seisin of Adhoc Additional Sessions Judge-III, West Champaran, Bettiah for trial.

6. Charge against the accused persons, namely, Jivan Kumar Sampang and Prakash Choudhary was framed under Section 177 of the Indian Penal Code and Section 4 and Section 5 of the Immoral Traffic (Prevention) Act, 1956 and further charge against the accused Prakash Choudhary was framed



under Section 376 of the Indian Penal Code which was read over to them by the court to which they pleaded not guilty and claimed to be tried. Subsequently during the course of trial the accused Prakash Choudhary absconded, so his case was split up from that of Jivan Kumar Sampang and thus only one accused namely Jivan Kumar Sampang faced the trial.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, the victim Sarita Sah as PW-1, Babita Purasaini as PW-2, Kanchan Kumari as PW-3, informant Suman Kumar Paswan as PW-4, Pankaj Paswan as PW-5, I.O. Manoj Kumar as PW-6, Dr. Alok Chandan who has examined the victim as PW-7 and the Judicial Magistrate 1st Class Amit Kumar Pandey as PW-8. Prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. 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. Accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid 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, convict Jivan Kumar Sampang has preferred this 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 Amicus Curiae for the appellant that though the appellant has been convicted under Section 5 of the Immoral Traffic (Prevention) Act, 1956, but there is no allegation, of inducing the victim to carry her for prostitution, made against the appellant by the victim or any other witness examined by the prosecution. Thus, no offence under Section 5 of the Immoral Traffic (Prevention) Act, 1956 is made out against the appellant. It is further submitted that as per the medical examination report marked as exhibit-3 and testimony of Dr. Alok Chandan (PW-7), the victim was major aged about 19 years at the time of her examination and learned Magistrate namely Amit Kumar Pandey (PW-8) has also stated in his examination-in-chief that at the time of recording the age of the victim under Section 164 Cr.P.C., he had assessed



the age of the victim as 20 years. Thus, the victim was major at the time of occurrence and as per the account of the victim herself, accused Prakash Choudhary kept her in a hotel at Kathmandu where she stayed with Prakash Choudhary in a single room and there was two bed in the said room, but in the night they came on one bed and then Prakash Choudhry committed rape against her and victim and the accused Prakash Choudhary are of the same village. Aforesaid aspect of the case and statement eloquently indicates that the victim had consented for sexual intercourse with Prakash Choudhary and moreover there is no such allegation against the appellant. It is further submitted that as per the account of the victim she was taken by bus from Kathmandu to Birganj and from there to Raxaul by Auto and there were several passengers in the bus and auto, but she did not make any alarm about taking her by the appellant and other accused forcibly for vending her in Kuwait for prostitution which creates serious doubt about the prosecution case. It is further submitted that there is vital contradiction between the prosecution case and the statement of the informant given before the Court and between the statement of the witnesses *inter se* regarding presence of the appellant with the victim in the train and apprehension of the appellant in the train



itself, etc. which also creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the 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 informant has supported the prosecution case *in toto* and victim and other witnesses examined by the prosecution have also corroborated the prosecution case and the learned trial court correctly appreciating the facts and evidence available 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 the prosecution case as adumbrated in the written report, it appears that the appellant and co-accused Prakash Choudhary had asked the victim to send her to Kuwait for earning lucrative money there and for that



purpose they were taking her to Delhi for illegally sending her to Kuwait. But the victim Sarita Sah examined in this case as PW-1 in her examination-in-chief has nowhere stated about inducing her to send her to Kuwait for earning lucrative money by the appellant as in her examination-in-chief she has simply stated that Prakash took her to Kathmandu and kept her in a hotel and committed rape against her. Then he took her to Birganj. Appellant Jivan Kumar Sampang was also present with him. In Birganj, Prakash Choudhary kept her in a hotel for one day and then took her to Raxaul Station for further proceeding to Delhi. In para-7 of her cross-examination, she has further stated that Prakash had taken her to Kathmandu from her village alone. In Para-4 of her cross-examination, she has stated that she does not identify Jivan Kumar Sampang. Aforesaid statement of the victim stands in quite contradiction to the prosecution case and creates serious doubt about the complicity of the appellant in the occurrence. Moreover, neither there is any allegation of inducing the victim to send her to Kuwait for the purpose of prostitution against the appellant nor the victim in her testimony has stated so.

15. As per the account of victim as given by her in para-15 and 18 of her cross-examination, she was taken from



her village to Kathmandu by Prakash Choudhary and from Kathmandu to Birganj by both Prakash Choudhary and the appellant by bus and from Birganj to Raxaul by Auto and bus was packed with the passengers and there were other commuters in the auto also, but she did not divulge to the commuters and driver of Auto about taking her by the aforesaid persons forcibly. In para-20 of her cross-examination, she has further stated that she had also not divulged to the people of the organization in the train about taking her by the accused persons forcibly rather on alighting from the train. From perusal of the written report, it appears that the appellant and Prakash Choudhary were apprehended along with the victim in the train itself and from there they were taken to GRP police Station. But in quite contradiction to the aforesaid prosecution case, the informant (PW-4) has stated in para-7 of his cross-examination that for the first time he witnessed the aforesaid two accused persons and the victim Sarita Sah in the police station. PW-3 Kanchan Kumari has stated in her examination-in-chief that the volunteer Babita Purasaini took the victim to GRP Police Station from the train. She has not stated about apprehension of the victim along with the appellant and taking the appellant to the GRP police station along with the victim by the informant.



As per the prosecution case as adumbrated in the written report, the accused persons were sitting along with the victim in the Satyagrah Express Train and were apprehended with the victim in the said train, but volunteer Babita Purasaini (PW-2) who was allegedly confabulating with the victim in the train has stated in para-1 of her examination-in-chief that when she spotted the victim Sarita Sah in the train she was sitting alone. In Para-8 of her cross-examination, she has stated that when she got alighted Sarita from train she was alone. In para-1 of her examination-in-chief, she has stated that during the course of quizzing the victim in the train, appellant and Prakash Choudhary came to her fetching water bottle. But in quite contradiction to the aforesaid statement, she has stated in para-8 of her cross-examination that when they were making counselling with the Sarita near over bridge of the platform, aforesaid two accused persons arrived there fetching water bottle while in Para-12 of her cross-examination, she has stated that during the course of counselling both the accused persons were sitting on the platform. PW-5 Pankaj Paswan though has stated in para-1 of his examination-in-chief about witnessing of apprehension of two boys and a girl by the police in general bogie of Satyagrah Express Train and taken to GRP police station, but in quite



contradiction to the aforesaid statement, in Para-8 of his cross-examination, he has stated that he was not sitting in the said bogie of the train rather he had spotted the accused persons and the victim at the platform. Thus the aforesaid vital contradiction between the prosecution case and the statement of the informant and between the testimony of the witnesses *inter se* about presence of the appellant along with the victim in the train, apprehension of the appellant with the victim from the train, etc. creates serious doubt about the presence of appellant with the victim and his apprehension along with the victim in the Satyagrah Express Train in course of taking her forcibly to Delhi for sending her to Kuwait for the purpose of earning and complicity of appellant in the occurrence. There is no allegation of committing rape against the victim in the hotel of Kathmandu against the appellant rather against the accused Prakash Choudhary as made by the victim in her examination-in-chief.

16. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, the impugned judgment and order of



conviction and sentence passed by the 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 his bail bonds.

17. Accordingly, this criminal appeal is allowed.

18. Let a copy of the first and last page of this judgment be handed over to the learned Amicus Curiae, Mr. Prince Kumar Mishra and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
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