

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.467 of 2003

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Kamal Kumar, Son of Ram Kripal Mishra, Resident of Village – Pachamba, P.S. –
Muffasil, District – Begusarai.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Prakash Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-03-2018

This appeal is directed against the judgment of conviction dated 24.07.2003 and order of sentence dated 29.07.2003, passed by Shri Amresh Kumar Lal, the then 1st Additional Sessions Judge, Begusarai, in Sessions Trial No. 382 of 1999, by which the sole appellant Kamal Kumar stood convicted under Sections 363 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for four years with a fine of Rs. 2,000, having default clause.

2. Prosecution case as per the written report of informant Niranjan Kumar Singh (P.W. 5) filed on 07.03.1999 before Muffasil police station, in short is that his niece Archana Kumari, aged about 16 years, went to purchase some articles from a shop on 28.02.1999 at about 10.30 A.M. but she did not return, he claimed that the appellant Kamal Kumar has enticed and kidnapped his niece.



3. On the basis of the aforesaid F.I.R was registered being Muffasil P.S. Case No. 68/99. On completion of investigation police submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Shri Amresh Kumar Lal, the then 1st Additional Sessions Judge, Begusarai, for trial and disposal.

4. Charges were framed under Sections 363 and 366 of the IPC against the appellant.

5. To substantiate the charges, prosecution examined altogether eight witnesses. They are: P.W. 1 Amrit Kumar Mishra, declared hostile, P.W. 2 Bhubaneshwar Rai, *Mama* of victim and a hearsay witness, P.W. 3 – Rani Devi, Aunt of victim, P.W. 4 – Archana Kumar, the victim girl, P.W. 5 – Niranjan Kumar Singh, informant and uncle of the victim, P.W. 6- Sabhapati Singh, Investigating Officer, P.W. 7 – Nirmal Kumar Mishra, Headmaster, who proved the admission register and P.W. 8 – Shiv Bachan Prasad, Advocate Clerk.

6. Apart from above, following documents have been brought on record and marked as Ext. 1 - Fardbeyan, Ext. 2 – Forwarding of fardbeyan, Ext. 2/1 – Registration of P.S. case on fardbeyan, Ext. 3 – F.I.R., Ext. 4 – Admission Register and Ext. 5 – Transfer Certificate.

7. On behalf of the defence, two witnesses were examined. They



are D.W. 1 – Ramadhar Singh and D.W. 2 – Hareram Singh and following documents have been exhibited. Ext. A – Deed (Bakshishnama dated 28.06.2001 and Ext. B – Certified copy of Judgment of T.R. No. 854/2000

8. On conclusion of trial, learned trial court though not found the appellant guilty under Section 366 of IPC, however, he convicted him under Section 363 of the IPC and sentenced him in the manner aforesaid.

9. Submission of learned counsel for the appellant is that in this case P.W. 1 has been declared hostile and P.W. 8 is a formal witness. P.W. 6 is the I.O. and P.W. 7, is the Headmaster, who proved Ext. 4 Admission register showing the date of birth of the alleged victim girl as 18 years at the time of occurrence. So far other witnesses are concerned, except P.W. 4, who is the victim in this case, all other witnesses appears to be hearsay witnesses and only claimed that the victim was kidnapped by the appellant but they are not eye witness of the occurrence. It has also been submitted that so far evidence of P.W. 4 is concerned, her evidence disclosed that when she had gone to purchase some articles, appellant called her and forcibly took her to Samastipur, where she was kept for two and half months. Thereafter, the appellant took her to village Narhar and was pressurizing her for marriage and her evidence disclosed that appellant has not made any



physical relationship with her and her evidence further disclosed that she was brought to Barauni Railway Station to go to Delhi but in her evidence, nowhere she has stated that she made any attempt or sought for anyone's help to get herself freed from the clutches of the appellant, which clearly goes to show that she was a consenting party. It has further been submitted that the falsity of prosecution case will appear from the fact that there is delay of seven days in lodging the F.I.R. and no proper explanation has been offered for the same. Further the defence has also brought two documents on record, which is Ext. A and Ext. B, but the same has not been considered by the trial court. Further falsity of the prosecution case will appear from the fact that informant claimed the age of girl as 16 years but from the admission register of school, her age appeared to be 18 years at the time of occurrence and the trial court without considering all the above facts has convicted the appellant under Section 363 of the IPC, which is not sustainable in the eye of law.

10. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by the Trial Court and has submitted that there is consistent evidence of victim that while she had gone to purchase some article from a shop, appellant called her and kidnapped her and took her to Samastipur and kept there for two and half months with an intention to marry her and also to commit



rape on her and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellant under Section 363 of the IPC is just and proper.

11. In the background of above submissions, it appears that P.W. 1 has been declared hostile, P.W. 8 is a formal witness, P.W. 7 is the Headmaster, who proved the admission register and P.W. 6 is the Investigating Officer and so far other witnesses are concerned, evidence of P.W. 2 who is the *mama* of the victim girl, shows that his niece was kidnapped and he was informed that the appellant had kidnapped her, evidence of P.W. 3, who is aunt of victim girl, shows that she had only seen the appellant talking with victim Archana Kumari and, thereafter, on 28.02.1999, Archana Kumari had gone to shop for purchasing some articles but she did not return and she apprehends that appellant kidnapped her, evidence of P.W. 5, who is the informant in this case, discloses that Archana Kumari was his niece and on 28.02.1999, Archana had gone to purchase some articles from shop and she did not return. His evidence also discloses that Archana Kumari was kidnapped by the appellant, as such, from evidence of these witnesses, it appears that they are only hearsay witnesses on the point of kidnapping of victim girl. From perusal of the evidence of P.W. 7, it appears that he was the Headmaster, who brought the transfer certificate and he has proved Ext. 4 the school



transfer certificate and his evidence disclosed that her date of birth was 05.03.1981 and occurrence is dated 28.02.1999 and as such according to the evidence, the victim was aged about 18 years at the time of occurrence and she was major and as such the trial court has convicted the appellant under Section 363 of the IPC and not under Section 366A of the IPC.

12. P.W. 6 is the Investigating Officer in this case and his evidence disclosed that the victim girl was recovered from Barauni and earlier she was seen at village Narhar also.

13. P.W. 4 is the victim girl and she has stated in her evidence that on 28.02.1999 at about 10.00 A.M., she had gone to purchase some articles from the shop of one Kapildeo Poddar and the appellant was there, who called her and forcibly took her to Samastipur, where she was kept for two and half months and from there she was taken to village Narhan and the appellant was enticing her for marriage and also tried to commit rape on her but as she was not ready, she was confined in a room and after two and half months, she was taken to Barauni Railway Station to take her to Delhi, from there she was recovered. According to her evidence, her statement was recorded by the police, in which, she has stated that her eyes and mouth were bandaged by the appellant and no villager came for her help. However, she has stated that she has not disclosed the same before the



Magistrate. Her evidence also disclosed that at the time of recording of her statement before the Magistrate, her father has also come along with her. Her evidence in cross – examination in para 12 shows that she remained there for two and half months but the appellant could neither marry her nor he could commit rape on her as she was not ready for that. Her evidence in cross-examination further shows that she was taken by the appellant in a four wheeler and at that time the shopkeeper Kapildeo Poddar and others were present there. Her evidence also disclosed that she was forcibly taken by the appellant but she did not raise *hulla* or sought for anyone's help to get herself freed from the appellant. The victim girl also claimed her age as sixteen years but the Ext. 4, shows that she was aged about 18 years at the time of occurrence and she was major.

14. The Trial Court has not considered the fact that the appellant took her to Samastipur and kept her there for two and half months and again took her to village Narhan and, thereafter, to Barauni but the evidence of victim girl nowhere shows that she made any attempt or raise *hulla* or sought for help to get herself released from the clutches of the appellant and only explanation given by her that she was threatened by the appellant and furthermore there is delay of seven days in lodging the F.I.R. Further as per the evidence of P.W. 4 at the time of her kidnapping there were many persons present but



surprisingly she did not raise any hulla or attempt to get herself freed, which also creates a doubt about the prosecution case and the veracity of evidence of P.W. 4 with regard to her kidnapping by the appellant . She was major at that time and her conduct discloses that she is a consenting party and further her evidence did not appear to be free from reasonable doubt. In the above mentioned circumstances, appellant certainly deserves the benefit of doubt.

15. Accordingly, this appeal is allowed. Judgment of conviction dated 24.07.2003 and order of sentence dated 29.07.2003, passed by Shri Amresh Kumar Lal, 1st Additional Sessions Judge, Begusarai, in Sessions Trial No. 382 of 1999, is hereby set aside.

16. As the appellant is on bail, he is discharged from liability of bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
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