

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.424 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Nand Kishore Dubey, son of Bhuneshwar Dubey, resident of village Sis wa Kharar,
P.S. Kalyanpur, District East Champaran (Motihari)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma (amicus curiae)

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 24-07-2018

Sole appellant has been convicted under Sections 376, 366A and 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years under Sections 376/34 IPC and a fine of Rs.2000/- with default clause and further sentenced to undergo rigorous imprisonment for seven years under Section 366A IPC, both the sentences were directed to run concurrently vide judgment and order dated 21.7.2003 and 23.7.2003 respectively passed by Sri Ram Bilas Rai, the then 5th Additional District and Sessions Judge, East Champaran, Motihari in Sessions Trial No. 255 of 2002.

2. Prosecution case as per fardbeyan of informant Hirdyanand Dubey (PW 1) is that the appellant was engaged as tutor of his daughter and appellant used to teach her at his residence. She was a student of Class-VIII of Siswa Girls' High School, on



7.10.2001 on the occasion of Dashara his daughter told the informant that she was required to remain present at private school situated near Katahari Bazar for rehearsal of a drama, on which informant told that that he would also accompany them. It is further case that appellant and Pinki Kumari came out of the house before 15 minutes of the informant for Katahari Bazar. He, on reaching at the relevant place, could not find his daughter and the appellant. Thereafter the informant went to the house of the appellant and search her but she was not found there and he could not trace out his daughter, hence he came back to his house. Further prosecution case is that in the evening at about 7 P.M. co-accused Yogendra Rai came to the informant's house and told that he would help him in tracing her out and informant again came to the house of the appellant and searched his daughter but his daughter could not be traced out. It is further stated that Yogendra Rai again came in the village and villagers caught him and assaulted him. The informant has alleged that the appellant and Yogendra Rai had kidnapped his daughter with a view to establish illegal sexual relation and marriage.

3. On the basis of aforesaid fardbeyan Keshariya P.S. Case No. 86 of 2001 was registered. Post investigation charge sheet had been submitted, cognizance was taken and after commitment the case traveled to the file of the learned Trial Judge for trial and disposal.



4. During trial eight witnesses have been examined on behalf of prosecution in order to establish its case, they are PW 1 Hirdyanand Dubey, informant, PW 2 Laddu Singh, declared hostile, PW 3 Lakshmi Devi, mother of victim girl, PW 4, victim girl, PW 5 Bashishth Mishra, declared hostile, PW 6 Rishi Kumar, an Advocate Clerk and a formal witness who has proved the fardbeyan (Ext.2), endorsement on the fardbeyan (Ext.2/a) and the formal FIR (Ext.3), PW 7 Dr. Manjula Nath, who has examined the victim girl and submitted medical report as Ext.4/A and PW 8, Sri Satish Chandra Srivastav, Judicial Magistrate, 1st Class, Motihari who recorded the statement of victim girl under Section 164 Cr.P.C. as Ext.5.

5. Defence of the accused is of innocence and false implication.

6. Learned trial Court on conclusion of trial has convicted the appellant under Sections 376/34 and 366A of the Indian Penal Code and sentenced him, as stated above.

7. Nobody appears on behalf of the appellant on repeated calls, as such, Sri Rajesh Kumar Sharma has been appointed as amicus curiae to assist this Court.

8. Learned amicus curiae has assailed the judgment on the ground that practically there is no legal evidence available on record and though PW 1 has supported the prosecution case in his chief but



he himself has stated in his cross examination that later on he came to know that there was no hand of the appellant in this case and as such his aforesaid evidence in chief has been contradicted by his evidence in cross examination. Further submission is that though PW 4 Pinki Kumari, the victim girl has supported the prosecution case in her chief but in her cross examination she has not supported the prosecution case and other witnesses, i.e. PW 3 mother of the victim girl has not supported the prosecution case in her cross examination and PWs 2 and 5 have been declared hostile by the prosecution and in such a situation conviction of the appellant only on the evidence of PW 1 and 4 who had supported the prosecution case in cross examination, is not sustainable in the eye of law.

9. On the other hand, learned counsel for the State has tried to defend the judgment but he also could not satisfy the Court as to what are the legal evidence available on record, as witnesses had either been declared hostile or they did not withstand the test of cross examination.

10. On perusal of the evidence in the background of the submission, it appears that PW 1 is the informant of this case and though he has supported the evidence in his chief that victim had to perform rehearsal for a drama and so she went to the school and she was traceless but in his cross examination he has categorically stated



that he has doubted the appellant that he got her daughter kidnapped and when he came to know the correct information he filed a compromise petition in this case as his daughter was taken by the appellant and he had taken away his daughter with his consent.

11. PW 2 has been declared hostile in this case and he has not supported the prosecution case. PW 3 is mother of the victim girl and she has not supported the prosecution case. PW 4 is the victim girl who has supported the prosecution case in her evidence in chief but in her cross examination she has categorically stated that police had brought her to the Magistrate and she has given her statement not voluntarily but on the pressure of the police and further she has stated that appellant had not kidnapped her nor he had made any physical relationship with her.

12. PW 5 has also been declared hostile and PW 6 is a formal witness in this case and PW 7 is the Doctor who has examined the victim girl and she has stated in her evidence in her opinion that she had not found any sign of rape on the person of victim and even in her cross examination she has stated about absence of spermatozoa and negated the finding of commission of rape.

13. On close scrutiny of the above evidence, as discussed above, it appears that PWs 1 and 2 had falsified the prosecution story of kidnapping and rape in their cross examination and Doctor has also



not found any sign of rape. As such, prosecution has miserably failed to prove its case.

14. In view of the discussions made above, this appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

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