

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.354 of 2003**

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

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Jai Prakash Sharma @ Putun Sharma, son of Sri Dhup Nath Sharma, resident of
village Dadaspur Naiya Bazar, P.S. Janta Bazar, District Chapra (Saran)

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Ms. Rashmi Jha, Advocate (amicus curiae)

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-03-2018

Sole appellant stands convicted under Section 366 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.1000/- with default clause vide judgment and order dated 19.5.2003 passed by Sri Baikunth Nath Shahi, the then 9th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 300 of 2001/43 of 2003.

2. Since nobody appears on behalf of the appellant to press this appeal, Ms. Rashmi Jha, Advocate has been appointed to assist this Court as amicus curiae, who has been heard.

3. Prosecution case, as per fardbeyan of informant Parsuram Sah recorded on 3.8.1999 at 10.30 A.M. by police, in short, is that on 29.7.1999 at about 10 A.M. daughter of informant Nayan Kumari, aged about 15 years, had proceeded from her residential house at



village Dayalpur for coming to the shop of her father situated at Janta Bazar but she did not reach there and his daughter-in-law reached his shop at about 12 noon and disclosed that the victim girl had already proceeded for coming to the shop but she had not reached there. Thereafter wife of informant Indrawati Devi (P.W.2) started searching her at village Dayalpur in the neighbouring houses and she could not trace her. The informant went to Rewati Bazar in the district of Gopalganj being a place of his relation but he did not trace her. Thereafter the informant went to his Sasural at village Chorma Bazar but the girl was not there. On 2.8.1999 when informant came back to his house, his wife informed him that his daughter was kidnapped by Jay Prakash @ Putun Sharma and she disclosed that on 2.8.1999 she had gone to Dandasapur with the mother of appellant Putun Sharma where it was learnt that Nayan Kumari was seen at the house of Jay Prakash in the morning of Sunday and one lady of the house of Jay Prakash disclosed that appellant Jay Prakash had gone with his father at village Banpura for catching some vehicle. It is also disclosed that Jay Prakash had his furniture shop by the side of the hotel of the informant and the appellant had his covetous eyes over the girl and he had shifted the furniture in the shop of his father a week ago and had closed his shop and was in the hunt of kidnap the girl and on 29.7.1999 seeing the victim girl coming to the shop of the informant,



he kidnapped her with the help of his father and at village Banpura he boarded in some vehicle and had gone away.

4. On the basis of the aforesaid fardbeyan, Janta Bazar P.S.Case No. 46 of 1999 was registered. Police after investigation submitted charge sheet against the appellant and his father and after cognizance the case has been committed to the court of sessions, which ultimately came to the file of Sri Baikunth Nath Shahi, the then 9th Additional Sessions Judge, Saran at Chapra for trial and disposal.

5. In order to establish its case prosecution has examined altogether six witnesses, they are P.W.1 Parshuram Sah, who is informant and father of victim girl, P.W.2 Indrawati Devi, who is wife of informant and mother of victim girl, P.W.3 Raj Kumari Devi, who is daughter-in-law of informant and bhabi of the victim girl, P.W.4 Nayan Kumar, who is the victim girl, P.W.5 Ram Narayan Sinha, who is I.O. in the case and proved Exts. 2 and 3 and P.W.6 Arvind Madhav, the then Munsif-IV, Saran, who has recorded statement of victim Nayan Kumari in his own writing.

6. On behalf of defence, two witnesses have been examined, they are D.W.1 Malti Devi, who is mother of appellant Jay Prakash and D.W.2 Manoj Tiwari, who is shopkeeper having shop beside shop of the informant. They have deposed on the point that appellant was not present in the village as he had gone to Siwan in connection with



treatment of his friend who has been operated upon.

7. Learned trial court on conclusion of trial has convicted the appellant under Section 366 IPC and sentenced him as stated above, however acquitted the other accused.

8. Contention of learned amicus curiae is that in the present case though FIR has been lodged on 3.8.1999 and by that time the victim girl was already recovered, which appears from the evidence of P.W.1 (informant) but still that fact has not been mentioned in the FIR for the reason best known to the informant, as such, the prosecution has not come with clean hand and suppressed the material fact. Further submission is that as per evidence of P.W.2 she went to the house of the appellant and mother of appellant told her that her daughter was taken by the appellant but mother of the appellant has been examined as D.W.1 in the present case but no such suggestion has been given to this witness. Further it has been submitted that there are vital contradictions in the evidence of P.W. 1 and P.W.2 as P.W.1 has alleged that he has come to know about his daughter from one person Munimji, whereas P.W.2 in her evidence has stated that she has been informed by one Dharmnath Sah about her daughter and evidence of P.W.4, who is victim girl, shows that she was informed by one lady about the place where she was and she informed about the father's name and her house and the lady has given information to her



father that she had been recovered. All these contradictions are vital contradictions and create doubt about the prosecution case. It is also submitted that there is contradiction in the evidence of victim girl in court from her earlier statement made before Magistrate under Section 164 Cr.P.C. and all these contradictions clearly make out inconsistency in the prosecution evidence. However, learned trial court has not considered these aspects of the matter and has convicted the appellant under Section 366 IPC.

9. On the other hand, learned counsel for the State has submitted that evidence of P.W.4, who is the victim girl, clearly shows that it is the appellant who came to her and provided Laddu and she became unconscious and she was taken to Chapra and her evidence also found corroboration from her statement made under Section 164 Cr.P.C. and even the same found corroboration from the evidence of P.Ws. 1 to 3, who are father, mother and “bhabhi” of the victim girl, as such, the impugned judgment does not suffer from any infirmity and appears to be just and proper which does not require any interference.

10. In the background of aforesaid rival contentions of both sides, on examination of evidence it appears that P.W.1 has lodged the FIR on 3.8.1999 and further evidence of P.W.1, paragraph-11 shows that after coming to know the whereabouts of the victim girl he has



lodged the case but no such fact has been mentioned in the FIR, which is the earliest story. Further it appears that P.W.1, who is the informant in this case, has stated that he came to know about whereabouts of the girl from a person who is called Munimji in paragraph-14 of his evidence, whereas P.W.2, who is mother of victim girl, has stated that she came to know that victim was recovered from Mona Chawk Gandhi Chawk and she was kept in the house of one Dharmnath Sah and that evidence of P.W.2 is contrary to the evidence of P.W.1 and neither Munimji nor Dharmnath Sah has been examined in this case to support the prosecution case. On perusal of evidence of P.W.4, who is victim herself, it appears that when she regained her consciousness she found herself near a betel shop situated near a temple and from a lady she enquired about the place and informed her about father's name and the house and her evidence further disclosed that they helped her to go to her parents house and she has stated that one person has informed about her to her father. However, her evidence shows that after recovery she went to the Police Station along with her mother and her statement was recorded, whereas evidence of I.O. (P.W.5) shows that he came to know on 6.8.1999 at about 10 P.M. that the girl was recovered at Chapra and thereafter she was brought back and her statement was recorded on 7.8.1999. All these evidences are contradictory to each other and



create serious doubt about the prosecution story of kidnapping by the appellant. On the other hand, defence of the accused person is that prosecution party has taken some furniture from the shop of the defence side and they have not paid the amount and for that this false and concocted case has been lodged and she had gone to the house of her Mousi from where she was recovered.

11. As discussed above, the prosecution has not examined any witness in support of its case that she was recovered from Chapra near a temple or from the house of Dharmnath Sah, rather evidence available on record shows that she was brought back on 6.8.1999 and her statement was recorded on 7.8.1999. It further appears that though prosecution has admitted that she was recovered but FIR has been lodged on the fact that she has not been recovered for the reason best known to the prosecution. All these facts certainly create doubt about the manner of occurrence and also about involvement of the appellant in the present case. Learned trial court has not considered the aforesaid aspect of the matter while convicting the appellant under Section 366 IPC.

12. Considering the discussions made above and also considering the inconsistencies and infirmities in the evidence, as discussed above, the appellant, to my opinion, is entitled to the benefit of doubt in the present case as prosecution case suffers from



infirmities.

13. Hence, 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/-

AFR/NAFR	
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