

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.46 of 2013

Arising Out of PS.Case No. -512 Year- 2010 Thana -null District- BHOJPUR

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Raju Kumar Pandey S/o Sri Bimal Kumar Pandey Resident Of Mohalla- New Colony, Paurhi, Police Station- Ara Nawada, District- Bhojpur

.... Appellant.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

For the Appellant : Mr. Akhileshwar Prasad Singh, Sr. Advocate.

Mr. Amrit Anunay, Advocate.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 12-09-2018

Heard learned counsel for the appellant as well as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction dated 20.12.2012 and order of sentence dated 21.12.2012 passed by the learned 2nd Additional Sessions Judge Bhojpur, Ara, in Sessions Trial No. 195 of 2011 arising out of Ara Nawada P.S. Case No. 512 of 2010, whereby the learned trial court convicted the accused Raju Kumar Pandey under Section 366 of the Indian Penal Code and sentenced him to undergo R.I. for three years under the aforesaid section.

3. The factual matrix of the case is that Ara Nawada P.S. Case No. 512 of 2010 was instituted under Section 366-A and 379 of the Indian Penal Code against Raju Kumar Pandey on the basis



of written report of Ramji Pandey with the allegation in succinct that on 11.12.2010 at around 5:30 AM accused Raju Kumar Pandey enticed away his minor daughter aged about 16 years from his house taking cash of Rs. 6000/- and some ornaments worth Rs. 20,000/- from his Almirah. In course of escaping from his house, he left his slipper in the house. Raju Kumar Pandey happens to be married person having issues. His wife had gone to temple a bit ahead of the occurrence and had witnessed them proceeding and on her regression he learnt about the occurrence. His brother Baijnath Pandey has also seen them during the course of morning walk. When his daughter did not return to the house, after passing of long time, he approached the father of the accused who divulged that his son is missing since morning. He made hectic search of his daughter but in vain.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet under Section 366-A and 379 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 under Section 366-A and 379 of the Indian Penal Code against the accused and committed the case to the Court of Sessions



and after commitment and on transfer finally the case came in the seisin of learned 2nd Additional Sessions Judge Bhojpur, Ara for trial.

6. Charge against the accused, namely, Raju Kumar Pandey was framed under Sections 366 (A) and 380 of the Indian Penal Code and Charge was read over and explained to him by the Court to which he pleaded not guilty and claimed to be tried.

7. During the course of trial in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Neha Kumari as PW-1, Shashi Kala Kumari as PW-2, Baijnath Pandey as PW-3, Archana Kumari as PW-4, informant Ramji Pandey as PW-5, I.O. Uma Shankar Singh as PW-6 and Dr. Pushpa who had examined the victim as PW-7. The prosecution has also filed and proved several documents by way of documentary evidence.

8. Statement of the accused persons 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. Defence has neither adduced any ocular nor documentary evidence in buttress of its 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, the convict 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 charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that there is no eye witness of the occurrence. All the material witnesses examined by the prosecution happen to be family members and victim and none had seen the appellant kidnapping the victim. It is further submitted that as per the medical report the victim was aged about 19 to 21 years i.e. major at the time of occurrence and as per the statement of the victim given by her under Section 164 Cr.P.C. she was in love with the appellant and herself eloped with the appellant out of her sweet will. In view of the aforesaid statement of the victim no case of kidnapping is made out against the appellant. It is further submitted that as per the witness account they had received telephone call from the appellant regarding kidnapping of the victim but neither the mobile of the appellant nor of the prosecution on which the call was received was seized by police nor CDR of the aforesaid mobile



was procured by it to substantiate the occurrence of kidnapping of the victim by the appellant. It is further submitted that there is vital contradiction in the statement of the witnesses. As per the statement of the informant, he along with his brother Baijnath Pandey was on morning walk at the time of occurrence but Baijnath Pandey has not stated so. It is further submitted that none of the material witnesses had seen the appellant kidnapping the victim rather the wife and brother of the informant have simply stated about witnessing the appellant following the victim at the time of occurrence and mere proceeding behind the victim does not decisively constitute the offence of kidnapping rather it might be a co-incidence. It is further submitted that statement of the victim given before the court in quite contradiction to the statement recorded under section 164 Cr.P.C. regarding her kidnapping by the appellant is not worth credence and reliable. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy, reliable ocular and documentary evidence. Hence, the appellant is entitled for acquittal.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that as per the matriculation certificate the victim was under 18 years that is minor at the time of



occurrence and if there is any discrepancy between the matriculation certificate and medical report the age given in the matriculation certificate will prevail. It is further submitted that though the victim has deposed before the Court in contradiction to the statement given by her under Section 164 Cr.P.C. but the said contradiction has no potential to rule out the prosecution case of the kidnapping of victim by the appellant as victim was minor and she was taken away from the lawful guardianship of her father by the appellant either with or without consent of victim which tantamount of kidnapping of the victim and the learned trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid 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 record, it appears that the informant does not happens to be eye witness of the occurrence as he has lodged the FIR on the basis of disclosure made by his wife namely, Shashi Kala Kumari (PW-2) and his brother Baijnath Pandey (PW-3). From perusal of testimonies of aforesaid witnesses it appears that the aforesaid witnesses in their respective examination-in-chief have not stated about kidnapping of the victim by the appellant at the time of occurrence rather have simply stated about following the victim by the appellant at the time of occurrence. Mere following of



the victim by the appellant at the time of occurrence, in my considered opinion, does not amount to kidnapping of the victim by the appellant rather it might be co-incidence.

15. As per the statement of the informant, his brother Baijnath Pandey was on morning walk with him at the time of occurrence but the said Baijanth Pandey (PW-3) has not corroborated the aforesaid statement of the informant rather has stated that he was alone strolling at the time of occurrence. As per the account of informant he had not seen the occurrence of kidnapping of the victim by the appellant, which indicates that the Baijnath Pandey must have also not witnessed the said occurrence. There appears to be vital contradiction between the statement of the informant and Baijanath Pandey regarding the aforesaid aspect of the case. From the perusal of the record, it appears that the victim had stepped out of the house at 5:30 AM on the date of occurrence and as per the account of the informant (PW-5) given by him in Para-4 of his cross-examination it was dark murk at 5:30 AM. Aforesaid statement of the informant rules out witnessing of the appellant following the victim at the time of occurrence by the wife and brother of the informant.

16. Neha Kumari (P.W.1) has stated in para-1 of her examination-in-chief that in the noon of the date of occurrence there



was a message and call from Raju Kumar Pandey about custody of the Archana Kumari with him. In para-6 of her cross-examination she has also stated that the aforesaid call was received on mobile number 9546366081. She had divulged the aforesaid number to the police but the police had not seized the aforesaid mobile. From perusal of the record, it appears that neither the said mobile nor the mobile of the appellant by which he had made call of kidnapping has been seized by the police and the CDR of the aforesaid two mobiles have also not been produced by it in corroboration of the occurrence of kidnapping by the appellant. There appears to be no independent eye witness of the occurrence.

17. From the perusal of the evidence of the Dr. Pushpa (PW-7), who had examined the victim and the medical examination report, it appears that the doctor has opined the age of the victim as 19 to 21 years at the time of her examination. The aforesaid examination of the victim was held about 1½ months later to the occurrence. Hence, as per the aforesaid medical evidence, the victim was major at the time of occurrence. But from perusal of the matriculation certificate of the victim produced by the prosecution marked as exhibit 6, it appears the date of birth of the victim is 03.01.1994 and as per the aforesaid date of birth she happens to be minor i.e. under 18 years of age at the time of occurrence. It is settled



principle of law that when there is discrepancy between medical evidence and matriculation certificate regarding age of victim the date mentioned in the matriculation certificate shall prevail. In the aforesaid facts and circumstances of the case, I find, that the victim was minor at the time of occurrence. The victim has stated in her statement recorded under section 164 Cr.P.C. marked as exhibit-A that she was in love with Raju Kumar Pandey and she had eloped with him to Arunachal Pradesh out of her sweet will on 11.12.2010 and stayed there in the rented house for 3-4 days. The victim Archana Kumari (PW-4) has stated in her statement before the court that Raju Kumar Pandey used to entice her to perform marriage with him and took her to Arunachal Pradesh. They stayed in a single room for 3-4 days in the Arunachal Pradesh.

18. From perusal of the statement of the victim recorded under Section 164 and her cross-examination, it appears that both the victim and the appellant were pre-acquaintance as father of the victim is Professor in Vanbasi College while father of the appellant was a clerk in the said college and father of the victim and uncle of the appellant are friend and the informant has also stated in para-5 of her cross-examination that he is acquainted with Raju Kumar Pandey for the last 5-7 years. The appellant used to pay visit to his house along with his father within the aforesaid period oftenly.



The aforesaid statement of the victim and the informant suggest that the victim was pre-acquaintance to appellant.

19. From perusal of the statement of the victim recorded under Section 164 Cr.P.C. itself it appears that victim was taken away to Arunachal Pradesh by the appellant and where she stayed in the rented house for 3-4 days with the appellant. Aforesaid statement of victim recorded under Section 164 Cr.PC further indicates that both the victim and appellant regressed together at Ara and victim went to P.S. Nawada while appellant surrendered before the police. The victim happens to be minor and as per Section 361 of the Indian Penal Code whoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, or person of unsound mind, out of keeping of the lawful guardian of such minor, or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

20. In view of the aforesaid preposition of law, taking of the victim who happens to be minor by the appellant from the lawful guardianship of her father tantamount to kidnapping. As she was enticed by the appellant to perform marriage with her the offence of kidnapping of the victim by the appellant for performing marriage



with her stands proved and the appellant has been rightly convicted under Section 366 of the Indian Penal Code by the learned trial Court.

21. In view of the aforesaid facts and circumstances of the case and the discussions made by me hereinabove, I find that the impugned judgment and order of conviction and sentence passed by learned trial Court do not require any interference by this Court. Accordingly, the same is upheld and this appeal is accordingly dismissed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
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