

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.485 of 2003

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

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Sanjay Mahton son of Sri Narayan Mahton, resident of village- Bhirha, P.S.Medani Choki (Surajgarha), Dist. Lakhisarai.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Chandra Shekhar Sharma, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-03-2018

1. The sole appellant has been convicted under Section 366 of the Indian Penal Code and sentenced to undergo R.I. for seven years, vide judgment and order dated 24.9.2003 passed by Sri Jawahar Prasad Ratnesh, Vth Additional Sessions Judge, Munger in Sessions Trial No.183 of 1998.

2. The prosecution story as per the written report lodged by the father of the victim girl (Medan Yadav) (P.W.1) is that his daughter Lal Muni Kumari aged about 16 years is traceless in the night of 7-8/7/1996 between 12 to 02 O'clock and he shows suspicion that the appellant might have kidnapped her daughter in the pretext of marriage by inducing her as he used to visit the same village in the house of his neighbour Bachchu Yadav.

3. On the basis of the aforesaid written report, Sessions Trial No.183 of 1998 was registered, police after investigation, submitted charge-sheet, cognizance of the case has been taken and the



case has been committed to the court of Sessions, which ultimately came to the file of Sri Jawahar Prasad Ratnesh, Vth Additional Sessions Judge, Munger for trial and disposal.

4. In support of his contention, the prosecution has got examined altogether six witnesses, they are - P.W.1 Medan Yadav father of the victim and the informant, P.W.2 Manoj Kumar Yadav son of the informant, P.W.3 Anvi Devi wife of the informant, P.W.4 Suraj Kumar son of the informant, P.W.5 Lal Muni Devi (victim girl) and P.W.6 Ramawatar Ram, A.S.I., who is Investigating Officer.

5. Apart from the above D.W.1 Muni Mahto has been examined on the point that there was dispute with respect to *Chaukidari* in the village between the appellant and the informant as the informant used to work of *Chaukidari* in the village and thereafter the appellant came and he started doing that service due to which the informant was annoyed and he lodged the present case.

6. The learned trial court on conclusion of the trial has convicted the appellant under Section 366 of the IPC and sentenced him as stated above.

7. Being aggrieved by the aforesaid judgment, the present Appeal has been preferred by the sole appellant.

8. Contention of the learned counsel for the appellant is that P.Ws. 1 to 4 have only suspicion against the appellant and mother of the appellant (P.W.3) has even not supported the prosecution case



and she has stated that she does not know as to with whom she had gone. This witness has been declared hostile and there is nothing in the evidence of other witnesses except suspicion. It has further been submitted that so far evidence of P.W.5 is concerned, his evidence does not inspire confidence as she does not look probable that the appellant will be waiting in the night between 12P.M. to 2 A.M. and he will pull the daughter of the informant for 1 ½ km by pressing her mouth and pulling by another hand, whereas the evidence discloses that there are several houses on way. Further submission of the learned counsel for the appellant is that even the girl was kept in a *Kothari* at that time nobody was there but she did not raised *hulla* and tried to call any person and this fact will also be relevant that when she was recovered, nobody was found along with her and the appellant was also not there rather he was arrested prior to the recovery of the victim girl. All these facts clearly create serious doubt about the occurrence whereas the defence is that as there was dispute with respect of *Chaukidari* in the village of the informant, as such the appellant has been implicated in the present case and P.W.5, who is the victim girl has also admitted in her statement in para 19 so.

9. Contention of the learned counsel for the appellant is that in spite of the aforesaid inconsistencies and infirmities in the impugned judgment, the learned trial court has convicted the appellant under Section 366 of IPC.



10. On the other hand the learned counsel for the State has justified the finding of the guilt against the accused persons stating that P.W.5 is the victim who has categorically stated that she was forcibly taken by the appellant and kept in the *Kothari* and when the appellant was shifting her, she was recovered by the police from Tata Taxi, as such there are no infirmities in the impugned judgment and it is just and proper.

11. Having heard contention of the both parties and perusal of the evidence what transpires that there is nothing in the evidence of P.Ws. 1 to 4 in support of the prosecution case rather they have only shown suspicion against the appellant, however, P.W.5 who is victim girl has supported the prosecution case and she has stated about forcibly taking by the appellant by pressing her mouth and pulling her by another hand. Evidence of P.W.5 victim at para 11 discloses that distance between Deoghara village of the victim girl and Birha is 01 km. where she was taken. Her statement in para 12 also shows that from the village Birha by foot it will take 20-25 minutes. Her evidence also discloses that when she was kept in the *Kothari*, her mouth was not closed. Evidence of the I.O. in para 10 shows that Deoghara is on the road and house of the victim is situated in lonely place and not on the road and in para 11 it is stated that by going in the west of Deoghara village Chaitola is situated and Birha Chowk is situated. The aforesaid evidence shows doubt about the



prosecution story as stated by P.W.5 as firstly it is not probable that a person pressing mouth and pulling her shall take her for one 1 ½ km and secondly in spite of she being kept in a *Kothari* without closing her mouth she did not raise *hulla*. It further appears that she has been recovered at Medani Chowk from a Tata Taxi and as claimed seizure list was prepared by the I.O but that seizure list has not been brought on record nor witness of the seizure list has been examined in this case rather evidence of the I.O. shows that she was recovered alone and nobody was there and evidence of P.W.5 further shows that she was boarded on the bus by an unknown person but that unknown person has not been examined in this case and there is nothing available on the record to show that she disclosed about kidnapping to any other passenger, all these facts create serious doubt about the prosecution case.

12. So far Section 366 of the IPC is concerned, it provides kidnapping, abducting or inducing woman to compel her marriage etc. and secondly such kidnapping or abduction must be (i) with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will or (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse.

13. None of the aforesaid ingredients were found as there was no evidence of kidnapping forcibly or marrying with her or to



seduce her for intercourse. As the evidence of P.W.5 has categorically stated that nothing was done with her, while kept in the Kothari.

14. So far kidnapping is concerned, Section 361 of the IPC defines the word 'kidnapping' and that shows taking or enticing away any minor under (sixteen) yeas of age if a male, or under (eighteen) years of age if a female, or any person of unsound mind, out of the 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.

15. The aforesaid fact clearly shows that for the purpose of kidnapping or enticing or taking her away by force is necessary but what gathered from the evidence available on the record that though she stated that she was forcibly taken away, but that does not appear probable and there is no evidence that she was enticed away.

16. The defence has come in this case that as there was dispute between the appellant and the informant with respect of *Chaukidhari* of village and earlier the informant used to do that wok but the appellant came for that business and thereafter the persons started giving the work and for that some inimical arises between the parties and from perusal of the evidence of P.W.5 at para 19 it appears that she has admitted that there was dispute between the father of the victim and the appellant with respect to *chaukidari* but the learned trial court has tried to dislodged on the ground that there was mistake



while recording evidence as such suggestion has been given to P.W.5, however, while recording due to mistake it was recorded mistakenly, however, even if it is disbelieved that there was a mistake in writing proceeding as given by the victim girl but such suggestion has been given to all the witnesses about the same. On the other hand the prosecution evidence is full inconsistencies and improbabilities.

17. In such a situation, the appellant is at least entitled for benefit of doubt in the present case, however, the learned trial court has not considered the aforesaid aspect of the matter.

18. Accordingly, this appeal is allowed, conviction and sentence of the appellant is set aside and as he is on bail, he is discharged from liabilities of his bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14.03.2018
Transmission Date	14.03.2018

