

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.315 of 2003

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

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Ramesh Kumar Mandal @ Ramesh Mandal, Son of Nangru Mandal, Resident of
Village – Chakla Niarmale, P.S. – Supaul, District – Supaul.

.... Appellant

Versus

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: 25-06-2018

Sole appellant stood convicted under Section 366A and 376 of the Indian Penal Code (herinafter referred to as the “IPC”) and was sentenced to undergo rigorous imprisonment of five years under Section 366A of the IPC and rigorous imprisonment of five years under Section 376 of the Indian Penal Code by the judgment of conviction and order of sentence dated 04.03.2003 passed by Shri A.K.M.M. Qureshi, 3rd Additional Sessions Judge, Saharsa in Sessions Trial No. 126/1991.

2. Prosecution case as per written report filed by P.W. 5 Usha Devi, mother of the victim girl Ranjana Kumari, in short is that her daughter, namely, Ranjana Kumari was traceless from the morning of 24.9.1990 and she left a letter in the house, in which she has stated that the appellant Ramesh Mandal has forcibly feed her a



‘Paan’ by mixing something due to which, she became helpless and under the spell, she is going with the appellant. It is alleged that she had taken Rs. 1,000 and a lady wrist watch of H.M.T. company. It is also alleged that appellant Ramesh Mandal was sleeping in her verandah of the house for the last one month stating that he had no place to sleep and as such the informant claimed that the appellant kidnapped her minor daughter on the plea of marriage.

3. On the basis of aforesaid written report, Supaul P.S. Case No. 295/90 was registered under Section 366A and 380 of the IPC was registered. Police after investigation submitted charge-sheet under Sections 366A, 366 and 376 of the IPC. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri A.K.M.M. Qureshi, 3rd Additional Sessions Judge, Saharsa for trial and disposal.

4. During trial charges were framed under Section 366A, 376 and 379 of the IPC and in order to prove the charges, prosecution has examined altogether nine witnesses. They are; P.W. 1, Upendra Prasad Mandal, P.W. 2 – Ramanand Kumar Verma (brother of the victim girl), P.W. 3 – Ranjana Kumari (victim girl), P.W. 4 – Meena Devi (sister of the victim girl), P.W. 5 – Usha Devi (informant and mother of the victim), P.W. 7 – Maya Pandey, the doctor, who examined the victim girl, P.W. 8 – Hari Mistri, a formal witness, who



proved Ext. – 4 and P.W. 9- Md. Shamsul Haque, who proved Ext. 4/1.

5. Apart from that following documents have been brought on record and marked as; Ext. 1 – letter in the writing of Ranjana Kumari, Ext. 2 – Signature of Usha Devi on written report, Ext. 3 – Injury certificate and Ext. 4- seizure list and Ext. 4/1 – signature of P.W. 9 on seizure list.

6. The defence of the accused person is of total denial of the occurrence and of innocence as per trend of cross examination and statement under Section 313 Cr.P.C.

7. Learned Trial Court after conclusion of trial convicted the appellant under Section 366A and 376 of the IPC and sentenced him in the manner aforesaid.

8. On perusal of the evidence of witnesses, it appears that P.W. 5 is the informant in this case and in her examination in chief, she has supported the case of prosecution and has stated that on 24.09.1990 at 6 A.M., she came to know about the occurrence and she has also stated that she found the letter written by victim Ranjana Kumari, disclosing that the appellant Ramesh Mandal by threatening her has taken her away and as such she being helpless has gone along with the appellant. This witness has proved the letter written by the Ranjana Kumari, which has been marked as Ext. 1. She has also stated



that the appellant used to sleep in the Verandah of her house as she has permitted him to sleep there. Her evidence in chief also disclosed that twenty days prior to the occurrence, the appellant had given one 'Paan' (betel) to Ranjana and told that after taking the betel, she felt dizziness and also told that he had persuaded her take the betel. On 23.9.1999, when she came from the duty, Ranjana told her that the accused has forced to eat a 'Paan' and after eating that 'Paan', she felt dizziness. Her evidence disclosed that Upendra Prasad Mandal has seen the accused/appellant going along with the victim girl. Her evidence also disclosed that the victim has taken away Rs. 1,000/- and an H.M.T. wrist watch. This witness in her cross-examination in para 15 has stated that at the time of occurrence, the victim girl was student of 9th class in the high school. Her evidence further disclosed that whole family members used to sleep in one room. From the earlier written statement, it appears that in the statement she has stated that the appellant had offered her a 'Paan' and after eating the said 'Paan' she became helpless and going along with him, whereas in her evidence, this witness has stated that in the letter she has written that on threatening, the appellant has taken her away. It further appears that she is not the eye witness on the point of kidnapping/abduction of the victim girl.

9. P.W. 2 is Ramanand Kumar Verma, brother of the victim



girl, he has supported the case of prosecution and stated that the occurrence took place on 24.09.1990 and he was present at his house. In the morning, he found a letter, which was left in the house and on perusal of contents of the letter, he came to know that his sister Ranjana Devi has run away with accused Ramesh Mandal and, he also stated that she had taken with her a cash of Rs. 1,000 and an H.M.T watch and when he started searching her in the morning, Upendra informed him that he has seen Ranjana going with Ramesh (the appellant). Evidence of this witness also disclosed that the appellant used to tease her sister before the occurrence.

10. P.W. 3 is the victim girl and she has supported the case of prosecution in her examination in chief and has stated that while she was sleeping on bed along with her elder and younger sisters and on that room itself her mother and brother were sleeping and appellant Rajesh Mandal pressed his body by *lathi* and when she woke up, she saw the appellant armed with pistol and asked her to come out, thereafter, he has taken away Rs. 1,000/- and one H.M.T watch from her. Her evidence also disclosed she was boarded on a Rickshaw and went towards the Dharbitta station and in between the appellant purchased a 'Saari' for her and he had thrown the pistol from the bridge, however, he was armed with a knife also and, thereafter, she was taken by train to Forbesganj station, where they have taken lunch



and from there she was taken to Jogbani and remained there for four days in a house provided by one Rickshaw puller, who was known to the appellant and she was subjected to forcible rape, thereafter, she was taken to Nepal, where she was kept for two days, where she was also subjected to rape. Her evidence also disclosed that two days prior to the occurrence, the appellant fed her a 'Paan' due to which she felt dizziness. This witness has been cross-examined at length and from her cross-examination in para 13, it appears that appellant had not given 'Paan' only to the victim girl rather he has offered 'Paan' to other family members also, in which, she ate the said 'Paan' and felt dizziness. Her evidence in para 17- of cross examination also disclosed that she came out by opening the door and left a letter there.

11. From evidence of P.W. 4, it appears that she had stated that she was sleeping with P.W. 3 Ranjana Kumari on the same bed and Ranjana herself opened the door on which, she asked as to where she was going, on which Ranjana (P.W. 3) replied that she was going to pluck flowers after that P.W. 4 fell asleep. She has also stated about the story of letter written by the Ranjana (P.W. 3), however, she has stated in her evidence that the appellant was living 10 to 15 yards away from her house. This witness has been cross-examined with regard to age of the victim girl Ranjana Kumari and she has stated that the present age of Ranjana Kumari was 17 to 18 years and this



witness was deposing in the year 1993. Attention of this witness has been drawn towards the statement made before the police in para -10 of her cross-examination and she has stated that she had not told *daroga ji* that both the sisters had gone out to pluck the flowers, however, she has again told that she also came out for plucking flowers but after that she returned back. A suggestion has also been given to this witness that there was love affair between the victim Ranjana Kumari and the appellant, however, she denied the suggestion. This witness has admitted that on date and time has been written on Ext. 1, the letter written by the victim Ranjana Kumari.

12. P.W. 7 is the younger sister of Ranjana Kumari and she has also supported the case of prosecution.

13. On close scrutiny of evidence as discussed above, it appears that Ext. 1, the alleged letter of Ranjana disclosed that the appellant offered her a 'Paan' and in the influence of the said 'Paan', she went along with the appellant and the story of the 'Paan' has been supported by the brother of the victim girl and other witnesses also. However, what appears from the perusal of the judgment that learned Trial Court has disbelieved the aforesaid story in para - 22 of the judgment. Apart from that what appears from the perusal of the evidence of P.W. 3 Ranjana Kumari that she has stated that on the point of pistol the appellant threatened her and called her and taken



away, whereas, the evidence of P.W. 4 discloses that Ranjana Kumari opened the door due to which she woke up and she asked from her as to where she was going on which, Ranjana Kumari told that she was going to pluck flowers. It further appears that in her cross-examination, she has also she has stated that she had also gone out along with Ranjana Kumari to pluck flowers but she came back. If the evidence of P.W. 4, who is non else than the sister of the victim girl, is to be believed then it appears that P.W. 3 is deposing falsely. Another aspect of the matter, which appears from the evidence of P.W. 3 Ranjana Kumari that she had stated that she was taken to Dharbitta Station and on way, the appellant had purchased a 'Sari' for her and through out the way, he threatened her on the point of pistol and later on he threw the said pistol from the bridge but evidence of P.W. 1, who alleged to have seen the appellant along with victim girl, disclosed that he had sent he appellant going along with the victim girl on foot. His evidence does not disclose that the appellant was armed with any weapon and it further appears from his evidence that he had seen the girl on 25.09.90, whereas according to prosecution story, she had been kidnapped on 24.09.90 and in spite of that the victim did not try to raise any alarm or call for the help of P.W. 1, creates a serious doubt about the prosecution story.

14. Learned trial court has considered this aspect of the



matter and he had found that even if she was a consenting party, she was minor and as such the consent of a minor is of no value and according to him, she was ravished by the appellant.

15. In this concern, it appears that P.W. 6, is the doctor, Maya Pandey who had treated the victim girl and her finding shows that the victim girl was habitual to sexual intercourse, no foreign body was on private part and no injury was found on the private part of the victim girl. No other discharge except menstrual bleeding was found and she has further stated that on radiological and dental examination, the age of the victim girl was assessed as 17 to 19 years. She has further disclosed that in view of the above data, no sign of rape is found. She has stated in her cross-examination that the victim was menstruating and during menstruation period, it is difficult to find any sign of rape. The learned trial court relying on this part of the evidence of the doctor in her cross-examination, had come to the conclusion that she was subjected to rape as doctor has also found that the victim girl was habitual to sexual intercourse.

16. Learned Amicus Curiae has submitted that the above finding of learned Trial Court that the factum of rape as alleged is established appears to be perverse as there is nothing to show that the victim girl was subjected to rape as the doctor has also not found any sign of rape or any injury either external or internal on the person of



the alleged victim girl.

17. It has also been submitted that the learned trial court has failed to consider that it is the prosecution, who has to prove its case beyond all reasonable doubts and the doctor after examination of the alleged victim girl, has clearly stated that no sign of rape has been found. In such a situation, finding of the learned Trial Court appears to be not sustainable in the eye of law. It has also been submitted that there is clear contradiction in between the evidence of all witnesses and from the evidence of P.W. 1, who claimed to have seen the victim girl going along with the appellant, it appears that she was a consenting party and from the evidence of doctor, it is also apparent that the girl was major at the time of alleged occurrence and no other document or material has been brought by the prosecution to prove its claim that she was minor at the time of occurrence. Though evidence discloses that she had passed matriculation examination but no certificate was produced. In such a situation, considering the established principle that the error of margin in assessment of age by medical board may vary from plus minus two years and for that the benefit will always go to the accused, it can safely be held that the victim girl was major at the time of occurrence and a consenting party. It has further been argued that the alleged victim girl traveled with the appellant at one after another place on foot and by other mode of conveyance but it has



no where been mentioned that she ever raised any alarm or tried to get herself freed rather her attention was drawn towards statement made before the Investigating Officer, from which it appears that she tried to escape from the custody of the parents but she was caught again at Sasaram. I.O. has not been examined in this case and in absence of his examination, the above discrepancies remained uncontroverted, hence, the conviction of the appellant under Section 366A and 376 of the IPC is not sustainable.

18. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by learned trial court and submitted that P.W. 3, who is the victim in this case as well as other witnesses have supported the case of prosecution and P.W. 3 has stated that the appellant has forcibly committed rape on her and it is well settled that in these kind of cases, sole testimony can be accepted without corroboration of any material particular and her evidence has to be placed at higher pedestal than the injured witness and in such a situation, conviction of appellant under Section 366A and 376 of the IPC is just and proper and does not require any interference.

19. In the background of arguments advanced on behalf of both the parties and on the scrutiny of the evidence as discussed above, it appears that the victim girl (P.W.3) has supported the



prosecution case of her abduction by the appellant on the point of pistol as she was under influence of 'Paan' offered by the appellant and she had been ravished regularly by the appellant but the evidence of P.W. 4, who is elder sister of the victim girl disclosed that the victim has opened the door herself and on being asked, she had stated that she was going to pluck the flowers. Evidence of P.W. 4 also shows that she had also gone to pluck flowers but later on, she returned. If the evidence of P.W. 4 is believed to be true, the version of girl (P.W. 3) about the manner of occurrence appears to be doubtful. It is alleged that the victim girl has forcibly been taken away by the appellant on the point of pistol but evidence of P.W. 1, who had seen the victim girl and appellant going together, disclosed that the appellant was not armed with any kind of weapon and the victim girl had also not raised any *hulla* or sought for any help before him. The evidence of P.W. 3 also shows that she traveled from one place to another place with the appellant by train, bus or on foot and stayed in a hotel but she never raised any alarm and only explanation was given that she was threatened by the accused person and it is also not a case that she was confined to only one place.

20. Apart from that, though the victim girl has stated that she was ravished by the appellant but the doctor, who examined her, did not find any sign of rape or any other injury either internal or external



on her person rather the evidence of doctor disclosed that she was habitual of sexual intercourse. No doubt, she has opined that it is difficult to find out any sign of rape during menstruation period and the trial court only relying on this part of the evidence of the doctor has come to the conclusion that the story of rape has been established, whereas, there is no such medical finding. In such a situation, it appears that the learned trial court has swayed away by the sentiments and his finding does not appear to be based on materials available on record. Besides that evidence clearly disclosed that the victim girl passed matriculation examination and for conviction under Section 366A and 376 of the IPC, age is quite material, which has to be taken into consideration and prosecution has to establish the same but in spite of that except oral evidence, no documentary evidence has been brought on record, whereas the evidence of doctor disclosed that she was between 17 to 19 years and if the same is considered in view of the settled principle that medical report with regard to assessment of age may vary plus minus two years and for that the same has to be calculated, which is beneficial to the accused person, considering the same, the girl appears to be major at the time of occurrence. Even if the girl is presumed to be minor, it is not enough for conviction of the appellant under Section 366A and 376 of the IPC and the learned trial court has failed to weigh the evidence in proper perspective. In the



present case, girl is the only witness of kidnapping and rape, the evidence of girl has to be tested to find out whether it is unimpeachable or beyond reproach. Besides that, in the present case, the evidence of P.W. 4 shows that the girl herself has opened the door and evidence of witnesses also disclosed that she had taken Rs. 1,000/- and an H.M.T watch with her and this fact creates a doubt about the manner of occurrence and that makes the evidence of victim girl not free from embellishment and unworthy of credence.

21. Considering the entire discussions made above, it appears that the prosecution has failed to establish its case against the appellant and, accordingly, this appeal is allowed. Judgment of conviction and order of sentence dated 04.03.2003 passed by Shri A.K.M.M. Qureshi, 3rd Additional Sessions Judge, Saharsa in Sessions Trial No. 126/1991.

22. As the appellant is on bail, he is discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

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