

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.131 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Chandrama Dusadh

2. Mallik Dusadh

3. Krishna Dushadh

1 to 3 are son of Shravan Dusadh

4. Shravan Dusadh Son of Late Jeev Nandan Dusadh

All are resident of village Mahuari P.S. Akorhigola, Distt. Rohtas

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Mithilesh Kumar Singh, 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: 06-02-2018

All the appellants stand convicted under Section 366A and 34 of the Indian Penal Code (hereinafter to be referred as 'the IPC') and sentenced to undergo R.I. for five years + fine of Rs.5,000/- with default clause and further been convicted under Section 454 of the IPC and sentenced to undergo RI for six months.

2. The prosecution case initiates on the basis of fardbeyan of one Shiv Janam Dusadh (not examined) recorded on 30.5.1988 at 09:30 A.M. by S.I. Sri A.K.Sinha I/C of Akorhigola Police Station stating *inter alia* that while they were sleeping in their house, he heard sound of fall of *Khappara* (tiles) and he saw the appellants in the



Aangan and they forcibly dragged his daughter Dharamshila Devi and took away her with intention to marry.

3. The above fardbeyan led to institution of Dehri (Akorhigola) P.S.Case no.212 of 1988, after investigation, the police submitted charge-sheet against the accused/appellants, 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 Uday Bhanu Narain Singh, 10th Addl. Sessions Judge, Rohtas at Sasaram.

4. During the trial, altogether three witnesses have been examined, they are – P.W.1 Sushila Devi (sister of the victim), P.W.2 Mareya Ram (uncle of the victim), and P.W.3 Jhalari Devi (step mother of the victim). The informant has not been examined and it has come that during the pendency of the trial, neither the I.O. nor the Doctor has been examined in this case.

5. On behalf of the defence, the victim lady has got himself examined in this case as D.W.1 .

6. The learned trial court in spite of the fact that the victim lady has not supported the prosecution case of abduction has convicted the appellants on the ground that she was minor at the time of occurrence and convicted the appellants under Section 366A/34 of the IPC and sentenced them as stated above.

7. Contention of the learned counsel for the appellants is



that the learned trial court has erred in law as well as on the fact as in spite of the fact that the girl has herself stated her age as 34 years on 4.1.2003 and the occurrence is of the year, 30.5.1988 and she has also stated so in her statement under Section 164 Cr.P.C. as 20 years but in spite of the fact, the learned trial court has found the girl as minor and even according to her evidence in court, she was aged about more than 19 years of age at the time of occurrence and certainly she can not be minor and there is other witnesses available on record, even in the FIR it is not alleged that she was minor . Further submission of the learned counsel for the appellant is that the victim girl is the best witness in this case and she has not supported of forcibly taking away and the learned trial court ought not to have disbelieved the girl and especially in the facts and circumstances of the fact that P.W.3 is the step mother and P.W.1 is the step sister and P.W.2 is the uncle of the girl and he is hearsay witness and he has not supported the case *in toto*, as such in the facts and circumstances that conviction of the appellant under Section 366A/34 of the IPC and Section 454 of the IPC is not sustainable in the eye of law.

8. On the other hand the learned counsel for the State has defended the judgment and stated that the evidence of P.Ws.1 to 3 is consistent, as such conviction of the appellant is just and proper and it does not require any interference.



9. In the background of the aforesaid facts as discussed above, it appears that the informant has not been examined in this case as he had died during the pendency of the trial, as such his statement is admissible under Section 33 of the Indian Evidence Act and the informant is the father of the victim girl and his evidence shows that the appellant forcibly took away the girl but that does not disclose her age. So far P.W.1 is concerned, she is sister of the victim girl and she has also supported the prosecution case that she heard sound of broking *khapra (tiles)* and also saw the accused appellants in her house and they dragged her younger sister from the house. She claims that her sister was 14 years of age at that time and she was reading in a private school and she has also stated that her sister was recovered from the house of Chandrama Dusadh. She has further stated that he has still kept her forcibly. His evidence in para 5 clearly shows that she is step sister of the victim girl. She has also admitted in her cross examination that after Dharamshila Devi being taken away (second time) , no case was lodged and she has denied the suggestion that Dharamshila Devi was married with Chandrama Dusadh.

10. P.W.2 is the uncle of the victim and further his evidence shows that he is hearsay witness and thereafter he has stated that on the basis of the information received from her *Bhabhi* and nephew P.Ws. 1 and 3 that Chandrama Dusadh had forcibly taken



away. His evidence in cross examination also discloses that at the time of *hulla*, her brother Shiv Janam Dusadh (informant) was not there and if his evidence is believed it falsify the presence of the informant at the place of occurrence and he has not been declared hostile.

11. P.W.3 is the step mother of the victim and she has supported the prosecution case and stated that the appellants have forcibly taken away the victim girl and thereafter the villagers assembled there. Her evidence also discloses that Chandrama Dusadh and Dharamshila Devi had visiting and talking terms. She has also denied that Chandrama Dusadh had married with Dharmashila Devi and they had issue also. She has also stated that her statement was not recorded.

12. Apart from the above evidence, no document has been produced in support of the age of the victim girl in this case though it is alleged that she was reading in school. On the other hand, victim Dharamshila Devi has got herself examined as defence witness as D.W.1 in this case and she has denied the prosecution case and she has stated that she was living with her father and step mother and they used to torture her and not getting her married and as such she on her own married with Chandrama Dusadh. She has also stated that she had three issues also. No doubt D.W.1 has been examined on behalf



of the defence but she is victim girl and her statement is most important piece in the present case and even in spite of the cross examination, there is nothing in her statement to doubt veracity of her statement. It is not so that the evidence of the defence witness must have to be discarded rather the evidence of defence witness is equally relevant and carrying the same weight as that of the prosecution witnesses and her evidence further shows that she was aged about 34 years of age on the day of recording her statement under Section 164 Cr.P.C. also discloses that she was aged about 20 years at the time of recording her statement and there is no other witness except the oral evidence of P.W.1. Hence, the above evidence discloses that on the date of occurrence she was not minor rather she was major. She has also stated that no kidnapping was made and there is nothing in her evidence to doubt her credibility, as such the whole prosecution case of kidnapping does not appear to be believable.

13. Learned trial court has erred in fact on appreciation, the evidence available on record and committed mistake by calculating that she was minor at the time of occurrence and further the learned trial court has disbelieved the evidence of the victim without assigning sound reason. The learned trial court has failed to consider that P.W.2 is not an eye witness of the occurrence and he is hearsay witness and his evidence discloses that the informant was not



in the house, that also creates a shade of doubt about the Fardbeyan. Moreover, the evidence of P.W.3 shows that her statement was not recorded by police. P.Ws.1 and 3 are the step sister and step mother, they used to torture her and that appears to be believable, as such in view of discussions made above, the learned trial court ought not to have disbelieved the evidence of D.W.1 who is most important piece of evidence in this case and he has not properly appreciated the evidence and finding is erroneous.

15. Considering the discussions as made above, the impugned judgment suffers from infirmities, hence, this appeal is allowed and conviction and sentence as in the impugned judgment and order are set aside. As the appellant is on bail, he is discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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