

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.76 of 2009

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Srikant Mahto son of late Gaya Mahto R/o village Barwa P.S. Shikarpur, West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/ss

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Appearance :

For the Appellant/s : Mr. Bashishtha Nr. Mishra, Advocate.

For the State : Dr. Bal Mukund Pd.Sinha APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 10-09-2018

This appeal has been preferred against the judgment of conviction dated 24.1.2009 and order of sentence dated 29.1.2009 passed by the Additional District and Sessions Judge, Fast Track Court –III, West Champaran, Bettiah in Sessions Trial no. 77 of 1994, arising out of Shikarpur P.S. case no. 230 of 1993, whereby appellant has been convicted under Sections 363 and 366(A) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years for the offence under Section 363 of the IPC and to pay a fine of Rs. 2000 and in default of payment of fine, further sentenced to undergo simple imprisonment for three month. The appellant has further been sentenced to undergo rigorous imprisonment for five years under Section 366A of the IPC and to pay a fine of Rs. 5000/- and in default of payment of fine, further to undergo simple imprisonment for six months. All the sentences were directed to run concurrently.



Heard learned counsel for the appellant, learned counsel for the State.

The learned counsel for the appellant has submitted that in the instant case victim Shobha Devi has been examined two times during trial. She has given contradictory statements in her evidence. He has further submitted that the victim has not levelled any allegation of specific overt act against this appellant in the written report. The learned Court below on the basis of evidence of the victim, who was examined two times, has acquitted the other accused persons and has convicted the appellant.

The court below after relying on the evidence given by the victim lady earlier as PW-6, on 3.5.1994, has convicted the appellant.

The prosecution case, as per the fardbeyan given by the father of the victim, is that his daughter Shobha Devi, has been kidnapped by Srikant Mahto and Bachcha Giri. Shobha Devi was married with Sita Ram Bharti about three years back. The victim had also taken away four *than*(piece) jewelry and cash of Rs. 1000/- with her. The informant had suspected the hand of other accused persons as named in the written report.

From the impugned judgment, it appears that earlier charge sheet was submitted against this appellant and Bachcha Giri. The trial had proceeded. During the pendency of the trial Bachcha



Giri has died and proceeding against him was dropped.

During trial initially altogether nine witnesses have been examined by the prosecution. Thereafter, other accused persons were also summoned to face trial under Section 319 of the Cr. P.C. along with this appellant.

The Court below has proceeded to hold the trial of those four accused persons also along with this appellant. During course of trial of those four appellants total five witnesses have been examined. The victim was also examined as PW-4, wherein, she has not supported the case against the appellant. The Court below has after relying on the subsequent evidence of the victim lady and the other witness who has gone hostile, acquitted all the four other accused persons who have faced trial. The Court below, after relying on the earlier evidence given by the victim girl as PW-6 on 3.5.1994, has convicted the appellant.

This Court has perused the evidence of the victim given on 3.5.94 as PW-6 and also the evidence of the victim lady Shobha Devi examined as PW-4 on 23.12.2002. In her earlier evidence recorded as PW-6, she has taken the name of the appellant and has levelled allegation against him. In her subsequent evidence recorded as PW-4 on 23.12.2002, she has stated that she has given her first statement before the police as well as before the Court under pressure of her father against this appellant. She has stated



in her subsequent evidence on 23.12. 2002 that this appellant has not kidnapped her. He has not committed illegal act with her.

The other witnesses have been declared hostile by the prosecution. They have not supported the case. The husband of the victim lady, namely, Sitaram Bharti (PW5) has also not supported the case during his evidence in court. He has stated that Shobha Devi is his wife. She was living with him. She was married with him in 1990. He has denied of kidnapping of his wife on 2.11.1993.

In such circumstances, this Court finds that the Court below has committed illegality in passing the judgment of conviction against the appellant without taking into consideration the apparent contradiction in the evidence of the victim lady, namely, Shobha Devi recorded earlier on 3.5.1994 as PW-6 and evidence of victim lady recorded subsequently on 23.12.2002 as PW-4. The victim has specifically stated in her subsequent evidence that earlier she had given evidence in the Court under the pressure of her father. This appellant has not committed any illegal act with her. Therefore, in view of such contradictory evidence given by the victim lady, the appellant is entitled for benefit of doubt.

In such circumstances, this Court finds that conviction of the appellant was not in accordance with law. The prosecution has



failed to prove the charge against appellant beyond all reasonable doubt.

Accordingly ,the impugned judgment of conviction dated 24.1.2009 and order of sentence dated 29.1.2009 passed by Additional District and Sessions Judge Fast Track Court –III, West Champaran, Bettiah in Sessions Trial no. 77 of 1994 arising out of Shikarpur P.S. case no. 230 of 1993, is hereby set aside. The appellant is acquitted of the charge(s) levelled against him. He is discharged from the liability of his bail bonds.

This Criminal Appeal is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
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