

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.162 of 2009

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1. Shamsad Dewan, son of Late Nurul Hoda Dewan.
 2. Julfikar Dewan, son of Late Khalil Dewan, both resident of village-Mehnaul Kala, P.S. Matariya, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ram Adya Singh-Advocate Mr. Arjun Prasad No.1-Advocate
For the Respondent/s	:	Mr. Parmeshwar Mehta-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 29-11-2018

Appellants Shamsad Dewan and Julfikar Dewan have been found guilty for an offence punishable under Section 363 of the I.P.C. and each one has been sentenced to undergo R.I. for four years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for six months, additionally, by the Additional Sessions Judge, Fast Track Court No.3rd, West Champaran at Bettiah vide judgment of conviction dated 12.01.2009 and order of sentence dated 14.01.2009 passed in connection with Sessions Trial No.393 of 1995.

2. The learned counsel for the appellants has confined his submission only over sentence and to justify the same, it has been submitted that occurrence so alleged, is to be of the Year 1995, the victim even before the alleged date of occurrence was married, at the time of deposition had already begotten a child, settled in life and further, the same status also happens to be relating to both the



appellants being the sole bread-earner of their family and further, on account of slackness at the end of the learned conducting advocate, the status of the victim was not challenged, though was major. Apart from that, from the evidence of the witnesses, more particularly that of victim in consonance with her earlier statement recorded under Section 161 of the Cr.P.C., she shown herself to be a consenting party, which on account of non-examination of I.O. could not be legally brought up on the record causing prejudice to the appellants coupled with the fact that appellant Shamsad Dewan remained under custody for eleven (11) months up-till-now, while appellant Julfikar Dewan remained under custody for nine (09) months up-till-now, needs modification of sentence reduced to as period already undergone in the aforesaid background.

3. The learned Additional Public Prosecutor opposed the same and submitted that PW-6, the victim had categorically stated that these two appellants kidnapped her and confined her in a room of their house, wherefrom she was rescued by the police, but fairly concedes that her earlier statement was inconsistent to the same over which, her attention has been drawn up. Also stated that on that score, non-examination of I.O. has overlapt their interest.

4. Gone through the record. From the evidence of PW-6, the victim, at Para-5 of her cross-examination, it is evident that her earlier statement recorded under Section 161 of the Cr.P.C. was confronted to her, which could not be brought up on record legally for want of



examination of the I.O.. Apart from that, it is also evident that the date of occurrence of the instant case happens to be of 24.09.1995. The judgment of this case has been delivered on 12.01.2009, from which date, both the appellants remained in custody up-till 13.04.2009, on which date, they were granted bail by this Court. Apart from that, they have remained under custody during course of trial as were apprehended on the date of occurrence itself. Perceiving the overall situation, the submission having on behalf of learned counsel for the appellants is found with merit and that being so, retaining the conviction of both the appellants under Section 363 of the I.P.C., sentence is modified as period already undergone retaining the fine along with default clause. The fine must be deposited within four weeks, failing which, the learned lower Court will be at liberty to proceed against the appellants in accordance with law.

5. Accordingly, instant appeal is dismissed with modification in sentence. Appellants are on bail, hence are discharged from its liability. Office to transmit the record to lower Court at once.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	07.12.2018
Transmission Date	07.12.2018

