

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.375 of 2003

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

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1. Surendra Sah, son of Babu Ram Sah
2. Madan Sah, son of Gauri Shankar Sah, both residents of village Kala Dumara,
P.S. G.B. Nagar, District Siwan

..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellant/s : Ms. Madhuri Lata with
Mr. Randhir Kumar, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 14-03-2018

Both the appellants stand convicted under Sections 366 and 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years on each count and both the sentences were directed to run concurrently vide judgment and order dated 17.7.2003 passed by Sri Anant Prasad Srivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional, FTC at Siwan in Sessions Trial No. 152 of 2001/33 of 2003.

2. Prosecution case as appears from the complaint petition filed by one Vijay Sah (PW 5) which was later on sent to police under Section 156(3) Cr.P.C. for its registration, in short, is that on 27.10.2000 at 11 P.M. in the night both the accused appellants entered into the palani of the complainant and at the point of firearm they lifted Urmila Devi, wife of complainant, from her palani and kept her



in a room and she was continuously raped by the accused persons for seven days. However, she escaped from the clutches of the accused persons and narrated about the commission of rape by the accused persons to her family members and on the basis of that G.B. Nagar P.S.Case No. 75 of 2000 was registered against the appellants. After investigation of the case police submitted charge sheet against the accused appellants and cognizance for the offence has been taken and after commitment the case traveled to the file of the learned trial judge for trial and disposal.

3. During trial charges were framed under Sections 366 and 376 IPC against the appellants.

4. During trial prosecution has examined altogether seven witnesses in order to establish its case, they are PW 1 Basmati Devi, PW 2 Charitar Sah, who has been declared hostile, PW 3 Sheojee Sah, who is father-in-law of the victim, PW 4 Umeshwar Singh, who has been declared hostile, PW 5 Vijay Sah, who is complainant/informant, PW 6 Dharamshila Devi, who is sister-in-law of the victim girl and PW7 Urmila Devi, who is the victim herself and Doctor has not been examined in this case.

5. On behalf of defence no ocular or documentary evidence has been adduced and their defence as per trend of cross examination and the statement under Section 313 Cr.P.C. is of false implication and of innocence.

6. Learned trial court on conclusion of trial has convicted



both the appellants under Sections 366 and 376 IPC and sentenced them as stated above.

7. Being aggrieved by the aforesaid judgment the present appeal has been preferred by the appellants.

8. Contention of learned counsel for the appellants is that in this case the complainant/informant is not an eye-witness either with respect to kidnapping/abduction or commission of rape as he was not present at the time of occurrence and so far other witnesses are concerned, on close scrutiny of the evidence it appears that prosecution evidence discloses that victim was kept in the house of appellant Surendra Sah situated in the same village for seven days but she did not raise any alarm and she was not rescued by anyone of the village, hence prosecution evidence does not inspire confidence. It has also been submitted that prosecution evidence also discloses that one Guriya Devi told the witnesses that both the accused appellants had lifted Urmila and they had taken her away but the said Guriya has not been examined in this case. Further contention of learned counsel is that neither the victim has been sent to Doctor for her medical examination nor her clothes were brought on record for examination. However, learned trial court on the basis of aforesaid infirmities has convicted the appellants under Sections 366 and 376 IPC and sentenced them as stated above.

9. On the other hand, learned counsel for the State has submitted that in this case the victim lady has supported the



prosecution case and her evidence has been corroborated by the evidence of other witnesses, as such, the impugned judgment is free from any infirmity.

10. In the background of rival submission, on examination of evidence it appears that PW 5 is the complainant/informant of this case and evidence of PW 5 discloses that he was not present at the place of occurrence and he has gone to his sister's house and when he returned he came to know about the occurrence. Further it appears that the complaint petition shows that occurrence took place from 27.10.2000 and complaint was filed on 7.11.2000 and there was delay in lodging complaint case. So far other witnesses are concerned, PW 1 is mother-in-law of the victim lady and on perusal of her evidence it appears that in her evidence in chief she has stated that at 11 P.M. in the night one Guriya Devi came to her house and stated that about commission of rape upon the victim by the accused appellants and when she went out she saw the appellants armed with firearms. However, in paragraph-6 of her cross examination she has stated that she came to know about the occurrence after seven days and, as such, her evidence does not inspire confidence. PW 2 has been declared hostile and there is nothing relevant in his evidence. PW 3 is father-in-law of the victim lady and he has stated that no such incident had taken place prior to the alleged date of kidnapping of Urmila and Guriya came and told him about kidnapping of the victim and when he went out, he saw the appellants armed with firearms and his



evidence also shows that appellant Madan has fired but there is no such prosecution story as per complaint petition itself. Furthermore, his evidence shows that she returned after one week and narrated about the occurrence. In paragraph-9 of his cross examination he has stated that there was hulla in the village that Urmila fled away with the accused persons, as such, his evidence is full of contradictions and does not inspire confidence. PW 4 has been declared hostile in this case. PW 6 is Dharmshila Devi and her evidence in chief discloses that one Guriya Devi told her about kidnapping of Urmila by the appellants and thereafter she went to search her along with her parents. However, in paragraph-6 of her evidence shows that she slept at 7 P.M. and she woke up at 4 O'clock in the morning and if her evidence is believed it appears that her earlier evidence is contradictory. PW 7 is the victim lady in this case and she has supported the prosecution story and her evidence discloses that she was abducted by the appellants and kept in the house of appellant Surendra Sah and she was subjected to rape and she has further stated that reason behind the occurrence is that accused persons had nurtured grievance against her as she had seen some occurrence in a maize field having taken place with the mother of accused Madan Sah.

11. On consideration of the prosecution evidence, evidence of victim herself shows that she was kept in village it looks improbable and absurd that in spite of that none of the villagers has tried to rescue her nor they had informed Chaukidar or police about



the occurrence. Further it appears that the victim lady has not been sent for medical examination and there is no medical evidence available on record nor her clothes were sent for chemical examination.

12. Learned trial court in spite of all the above inconsistencies and improbabilities in the evidence, has relied upon the evidence of PW 7, who is the victim lady and also found the same corroborated by other evidence and convicted the appellants under Sections 366 and 376 IPC. As I have discussed above, the evidence of prosecution witnesses does not inspire confidence. Moreover, Guriya Devi has not been examined in this case.

13. In view of discussions made above, this appeal is allowed and the impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.3.2018
Transmission Date	16.3.2018

