

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.228 of 2009

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Gopal Sah, son of Kedar Sah, resident of mohalla-Sharifganj, P.S.-Katihar,
Muffasil, District-Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 20-12-2018

1. As the learned counsel for the appellant failed to appear on account thereof, Sri Ranbir Singh, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Gopal Sah has been found guilty for an offence punishable under Section 363 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for two months, additionally by the Additional Sessions Judge, FTC-I, Katihar vide judgment of conviction dated 18.03.2009 and order of sentence dated 20.03.2009 passed in connection with Sessions Trial No.4 of 2006/3 of 2006.

3. Satya Narayan Poddar (PW.5) filed written report on 07.06.2004 divulging the fact that since 01.06.2004 his daughter (name with held PW.6) aged about 15 years has been found missing along with Rs.1450/- as well as three sets of cloth



whereupon they began to search and during course thereof, he came to know that Jageshwar Paswan @ Jai Kumar has enticed her away. He has gone to the place of Jageshwar Paswan and inquired from his mother who shown ignorance. Then thereafter, he sent his son Babloo whereupon parents of Jageshwar Paswan @ Jai Kumar became enraged and further, threatened that they will lodged a false case under SC/ST Act against them.

4. The aforesaid allegation was addressed to Superintendent of Police, Katihar without having any sort of allegation against the local police wherefrom, the written report came up to Katihar Town Police Station through proper channel thus paving way to institute, Katihar P.S. Case No.240/2004 on 09-06-2004. Then, thereafter, investigation commenced and during course thereof, victim came up on her own, she was medically examined, her statement under Section 164 Cr.P.C was recorded, and then thereafter, charge sheet was submitted facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has also been pleaded that victim happens to be major who had developed some sort of love



affair with Jai Kumar and with whom, she voluntarily joined after leaving her house, spent considerable time but, as the aforesaid Jai Kumar was handicap on account thereof, the victim became frustrated over his physical deficiency returned back to her place and then, in revengeful manner made statement even implicating the appellant whose presence was not at all during the aforesaid events.

6. In order to substantiate the case, prosecution has adduced altogether nine PWs have been examined who are PW.1-Kiran Kumari, PW.2-Sushila Devi, PW.3-Raj Kumar Poddar, PW.4-Dilip Poddar, PW.5-Satya Narayan Poddar, PW.6-victim, PW.7-Madhusudan Singh, PW.8-Renu Devi and PW.9-Chandan Kumar. Side by side has also exhibited Ext.1-Signature of informant over written report, Ext.2-Signature of victim over statement under Section 164 Cr.P.C., Ext.3-Endorsement on the written report, Ext.4-Formal FIR, Ext.5-Supplementary Charge sheet, Ext.5/A-Original Charge sheet, Ext.6-Medical Report. Defence has also produced two witnesses who are DW.1-Sita Ram Paswan and DW.2-Shivjee Singh.

7. Because of the fact that doctor has not been examined on account thereof, the medical report Ext.6 has been at the behest of PW.9 Chandan Kumar Singh, a formal witness. Due



to non-examination of the doctor, the medical report could not be legally acknowledgeable and on account thereof, goes out of consideration more particularly in the background of the fact that prosecution had not fulfilled the criteria so prescribed under Section 32 of the Evidence Act.

8. Now coming to the evidence of the PWs, it is apparent that not even a single independent witness has been examined. Whoever been examined are own family members that means to say, PW.1 is the elder sister of the victim, PW.2 is the mother of the victim, PW.3 is the brother of the victim, PW.4 is the uncle of the victim, PW.5 is the father of the victim, PW.6 is the victim herself and PW.8 is the sister of the victim. It is further evident from the lower court record that PW.1 to PW.5 simply have stated that victim slipped from the house and returned back on her own after 10-12 days. They have got no information / knowledge about the kidnapper nor, she after return had divulged identifying any body. Apart from this, save and except PW.3 under para-7 none had stated that she was minor or major on the alleged date irrespective of discloser in the written report. During cross-examination PW.3 at para-7 had stated that his brother happens to be five year younger to him and the victim is 2-3 years younger to him. Examination of PW.3 was on 24.03.2006 the occurrence is



dated 01.06.2004 and so, she was major on the alleged date of occurrence.

9. It is further evident that PW.6 the victim herself and PW.8 her one of the sister have tried to save themselves, it appears her family members were annoyed with the conduct of the victim. However, being a victim evidence of PW.6 has got primacy and so, the same has to be seen. She has stated that the occurrence is about two years ago, she had gone to bring vegetable from Chowk during midst thereof, met with Gopal Sah (Appellant). He came with rickshaw and instructed her to sit. On refusal at her end, he slapped. Then thereafter, on the pretext of knife he forcibly directed her to sit over rickshaw and then, taken to bus stand. From bus stand he took her to Purnea along with Jageshwar Paswan by bus. At Purnea, Gopal Sah hired a room where she remained along with Jageshwar. She remained there for fifteen days. Gopal after hiring the room, returned back. After four days, Gopal Sah came and inquired whether she has got any kind of difficulty/hardship whereupon, she replied Gopal Sah after assuring that he will stand by in case of exigency returned back. After eight days, Gopal Sah again came and caught hold her hand. She came out to the courtyard where Gopal Sah disclosed that your father has instituted a case. She will have to save them



otherwise she will be murdered. Thereafter, Jageshwar took her to her house and left at 12 midnight. After arrival at her house, her father informed the police. On the following day police came and accompanied her to police station. Recorded her statement. Then police took her to court where her statement was recorded. Identified the accused. During cross-examination she has stated that about four years ago, she had left her study. She was reading in a government school. She had read up to class-VII. Then there happens to be cross-examination with regard to topography of the area which happens to be densely populated. In para-7 she has disclosed that she alone came to chowk to purchase vegetable. She had not purchased vegetable as, during midst thereof, she confronted with the misfortune. She has further stated that seeing the knife, she had not raised alarm. She has not shouted even coming to bus stand on rickshaw. She had not protested nor disclosed to any of the passenger while being on board to Bus. Even after getting down bus she had not raised alarm nor protested. In para-8 she has stated that accused had not allowed her to come out from the room. When landlord knew about the episode, he ousted. Then said that he threw away all the clothes, other articles. Clothes were purchased by Gopal Sah. In para-9 she has stated that she had not talked with accused persons while



staying at Purnea. She had talked with land lady and her two daughters who were of same age group. She had further stated that she had disclosed to land lady that on the pretext of knife accused has kidnapped her. She had also requested to get her at her place. In para-10 she has stated that she used to sleep in a room, alone. Jageshwar used to bring food from a hotel. Jageshwar had not forced upon her. In para-11 she has stated that after coming back, she had not talked with her parents, brother, sister. After returning from police station, she had disclosed the event. In para-12 she has stated that Rs.850/- was along with her. In para-18 she has stated that she used to stay with the daughter of the land lady. Both were unmarried. She use to wear their apparel as, she had not carried her own apparel. Till the time of staying at Purnea, she remained along with the aforesaid two ladies.

10. PW.8 is one of the sisters of the victim who has stated that her family member is being threatened by the antisocial elements who have given direction not to depose against the appellant Gopal Sah. Then she stated that victim became traceless about three years ago. There was hectic search but, she could not be located. During course of search, the activity of Jai Kumar Paswan became known to them and further, he was the person who enticed her away. It has also been disclosed that proprietor of



one PCO had informed her father that Jai Kumar used to talk with Gopal Sah. He also disclosed that tomorrow morning, Jai Kumar will dial. When Jai Kumar dialed, Akhtar (proprietor of the PCO) came to inform whereupon she had gone along with him as her father was not present and then heard conversation of Jai Kumar with Gopal Sah. Jai Kumar had demanded money. Then thereafter, she had gone to her Sasural. During cross-examination she has stated that after her arrival at the PCO Jai Kumar had again dialed. At that very time, Gopal Sah was present and talked with him. Even then, she has not been able to know where Jai Kumar was staying. She had not disclosed her parents.

11. PW.7 is the I.O. who after exhibiting the relevant documents has stated that after registration of the case, he took up investigation, examined the witnesses, raided house of the accused. He got statement of the victim on 16.06.2004. On 18.06.2004 her statement under Section 164 Cr.P.C. was recorded. Then thereafter, accused were apprehended followed with submission of charge sheet. During cross-examination, he has stated that Gopal Sah was witness in this case. His statement was recorded. After statement of the proprietor of the PCO Gopal Sah has been transformed as an accused but he had not taken call details. In para-7 he has stated that there is no specific mention of



the fact in the statement of the victim regarding taking her away by Gopal on the pretext of knife. Further there happens to the definite assertion at her end with regard to marriage with Jageshwar and further, illegal activity at the end of her parents in removing the vermilion from her head. Then has stated that it was a love affair in between victim Jageshwar, which he found during investigation.

12. From the evidence available on the record as discussed herein above, it is apparent that victim had slipped from her house along with Rs.1450/- as well as three sets of cloth and that indicates her presence to be a consenting party. Furthermore, as is evident, PW.1 to PW.5 had not supported the case of the prosecution so far proper identification of accused is concerned. PW.8 is the person who has been examined at the end of the prosecution to say that Jageshwar and the appellant were on talking terms and on the relevant day, Jageshwar talked with the appellant at PCO but, neither the owner of the PCO has been examined nor call detail has been taken out from the PCO in order to corroborate that Jageshwar had talked. Now coming to the evidence of the PW.6, victim it is evident that she had deflected her from her statement as recorded under Section 161 of the Cr.P.C. It is further evident that before her statement before the



Magistrate she was at her house. Whatever been incorporated by her during 164 Cr.P.C. statement is the examination-in-chief but, her presence at the Chowk or going to the Chowk to purchase vegetable is a circumstance which none of the witnesses that means to say PW.1 to PW.5 as well as PW.8 had supported that means to say, none had said that either she was requested to bring vegetable nor, she was directed to purchase vegetable and so, going on her own to Chowk is a circumstance which could be seen more particularly in the background of the fact that till her return, she had not raised any kind of alarm in order to rescue herself nor, during course of investigation accompanied the police to Purnea to point out the relevant house where she was kept during intervening period. Apart from this, once the victim had said that she was along with land lady and her two daughters, were their dress dress as she had not at other place she had stated that when land owner knew the fact, her belongings, (detailed including clothes regarding which it was said to be purchased by Gopal) were thrown away.

13. In the aforesaid facts and circumstances of the case, the conduct of the victim is not at all found above board and that being so, appellant is found entitled for acquittal. Accordingly, judgment of conviction and sentence recorded by the learned



lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. First and last page of the judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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