

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.36 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

[Against judgment of conviction dated 22.12.2008 and order of sentence dated 23.12.2008 respectively passed the Additional Sessions Judge, FTC 5, Bhagalpur, in S.T. No.920 of 2006/TR No.88 of 2008 arising out of Kotwali P.S. Case No.729 of 2005]

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Dhananjay Yadav, son of Bishundeo Yadav, resident of village-Belbihima, Police Station-Harpur, in the District of Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate with
Mr. Amrit Anunay, Advocate
Mr. Gopal Prasad Roy, Advocate

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 18-05-2018

By judgment of conviction dated 22.12.2008 and order of sentence dated 23.12.2008 respectively passed by the Additional Sessions Judge, FTC 5, Bhagalpur, in S.T. No.920 of 2006/TR No.88 of 2008 arising out of Kotwali P.S. Case No.729 of 2005, sole Appellant has been convicted and sentenced for the offence under Section(s) 366, 376 Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years under each Section. Both sentences were ordered to run concurrently.

2. Prosecution case as per written report of the



Informant is that he submitted a petition on 22.10.2005 in respect of missing of his daughter. She remained traceless even after search. In the meantime, his daughter made contact with him from Mobile No.09213479695 and told him that she is in custody of Dhananjay and Sanjay along with 2-3 unknown persons in Sangam Vihar, Delhi. The Informant has further stated that Dhananjay Yadav was his Driver, who had gone on leave due to second marriage of his sister on 21.10.2005. He further submitted that Sanjay Kumar Yadav is a student of M.A. (English) 5th year and resides at Sarai, P.S.-Kotwali, District-Bhagalpur. Both are *Mamera* and *Fufera* brothers. On pressure, father of Dhananjay disclosed that Dhananjay had gone to Delhi to see his brother-in-law, Kamleshwari Yadav, for necessary work, who is mason in Delhi. Father of Dhananjay is in regular contact with his son-in-law through Mobile No. 09871738836. He has knowledge about the whereabouts of Dhananjay and aforesaid mobile number is of one Sheo Prasad, a labor contractor and Kamleshwari Yadav works under him. The Informant claimed that Dhananjay Yadav and Sanjay Yadav have kidnapped his daughter.

3. The police registered case on the basis of aforesaid written report against the accused persons and after completing investigation submitted charge-sheet against the



Appellant for the offence under Section(s) 366, 376/34 Indian Penal Code and kept investigation pending against another accused Sanjay Yadav. The Chief Judicial Magistrate, Bhagalpur, took cognizance against the petitioner and thereafter case was committed to the Court of Sessions. After trial, this Appellant has been convicted and sentenced as ordered in the impugned judgment.

4. The prosecution has examined 10 witnesses during trial.

5. The informant, Animesh Kumar Sinha, (PW 1) is the father of the victim girl. He has proved the written report as Ext.1. He has stated in his evidence that on 22.10.2005, his daughter had gone to take tuition in the house of Prof. C. S. Sharma, but she did not return. On query, Prof. C.S. Sharma told that she has not arrived at his house. The Informant gave information to the police in respect of missing of his daughter and on 01.11.2005 he got information on telephone that his daughter is under the confinement of accused Dhananjay Yadav, Sanjay Yadav and others at Sangam Vihar, Delhi. Dhananjay Yadav was his driver and Sanjay Yadav was his cousin brother. He further submitted that Delhi Police recovered the victim girl and Dhananjay Yadav and on 07.11.2005 he got his daughter under his custody by the order of the Court. Medical examination of the girl was done. Her statement was also



recorded under Section 164 Cr. P. C. His daughter told him that she was raped by this Appellant and other accused. Both gave threat to not raise any *halla*, otherwise, she and her father would be killed.

6. Mother of the victim, Deepa Sinha, (PW 2) has been examined as PW 2. She has stated in her evidence that her daughter went for tuition on 22.10.2005, but she did not return. Accused Dhananjay Yadav and Sanjay Yadav had kidnapped her daughter and committed rape with her. She has stated that her daughter was medically examined both at Delhi and Bhgalpur. Her statement was also recorded in Court under Section 164 Cr.P.C. She has denied the suggestion in cross-examination that her daughter wanted to perform marriage with Dhananjay and when Dhananjay refused, this false case has been lodged.

7. The victim girl, Richa Sinha, has been examined as PW 3. She has stated in her evidence that on 22.10.2005, Dhananjay Yadav and Sanjay Yadav abducted her while she was going on rickshaw. She has further stated that in the way Dhananjay met her and put a handkerchief on her nose and she lost her sense. Both accused took her to Deoghar Mandir and put vermilion on her head. When she removed vermilion, accused again put vermilion on her head. Thereafter, they took her to Asansol and kept her in a hotel and from there they took her to Haripur in the house of his



relative and on 25.10.2005 they took her to Delhi by train. She reached Delhi on 26.10.2005 at 10.00 PM. The accused took her in Auto. Kamleshwari Yadav, brother-in-law of Dhananjay Yadav was there in the Auto. They took her in a room. She was given medicine on 28.10.2005 and on 29.10.2005 she got up at 12 AM. She felt pain in abdomen, her cloth was loose and panty contained blood and sperm. She was feeling pain in her vagina (private part) and Dhananjay was standing there. She suspected that Dhananjay Yadav had raped her as she found him in the room. She has further stated that Dhananjay used to press her to write letters. The accused persons on 29.10.2005 at night conspired to demand ransom from her father and as the same was refused they gave threat to sell her. She talked her mother on the eve of *Diwali* in Bangla and at 2.30 PM Delhi Police came with Ajit Kumar Das and took her to Sangam Vihar Police Station. Dhananjay was also arrested. Then her medical examination was made. The police took her statement and she was brought in the Court and from there she came to Bhagalpur with her father. Medical examination of the girl was again done at Bhagalpur. Her statement was also recorded under Section 164 Cr.P.C. She has identified her signature thereon as Ext.2 and identified the accused Dhananjay in the dock. She has denied the suggestion that she had gone to Delhi with Dhananjay with her consent and has falsely



implicated him when he refused to marry her because he was already married.

Statement of the victim was recorded under Section 164 Cr.P.C. on 24.11.2005. She has admitted her signature on the statement as Ext.2. She has stated in her evidence about whole story of abduction.

8. Brother of the informant, Jayant Sinha, has been examined as PW 4. He has stated that he heard that Dhananjay and Sanjay have abducted Richa and took her to Delhi.

9. Prof. Chandra Shekar Sharma has been examined as PW 5. He has stated in his evidence that Richa used to come to take tuition at his house. On 22.10.2005, she remained absent. Thereafter, he knew about her abduction.

10. Sri Uma Shankar Singh, SI of Police has been examined as PW 6. He has deposed that on 18.11.2005, he reached New Delhi from Bhagalpur and took remand of accused Dhananjay Kumar Yadav by the order of Court and also visited the room from where the victim was recovered along with accused.

11. Sri Barmeshwar Singh, ASI, has been examined as PW 7, who has taken part in investigation and took on remand the accused from Patiala House Court.

12. Arbind Kumar Sharma, PW 8, is Officer-in-



Charge, who has proved Injury Report of the victim as Ext.4 (with objection). He has stated in his evidence that he submitted charge-sheet under Section(s) 366, 376/34 Indian Penal Code against the accused.

13. Dr. Abha Sinha, PW 9, has examined the victim girl. She has proved the Medical Certificate as Ext.5 showing the age of the victim above 18 years.

14. Sri Om Prakash Pandey, PW 10, is the Judicial Magistrate, 1st class, Bhagalpur, who has stated that he recorded statement under Section 164 Cr. P.C. He has proved the statement as Ext.6.

15. Defence of the accused is that victim girl was in love with Dhananjay and wrote several letters to her.

16. Defence has examined Bishundeo Yadav as DW 1. He has provided several letters written by the victim. He has stated in his evidence that those letters are written in the handwriting of the victim girl, Richa, which he has identified. The Court has marked those letters as Ext.A.

In the cross-examination, he has stated that he has studied up to Class VI. He has not disclosed in the cross-examination as to how and from where he got those letters.

17. To appreciate the allegation against the accused,



most important evidence is of the victim Richa Sinha, PW 3. She has stated in her evidence that she was kidnapped on 22.10.2005 by this Appellant and Sanjay Yadav while she was going on rickshaw for her tuition. Appellant, Dhananjay, was standing on the Beetle shop. Just one day prior to the occurrence, Dhananjay Yadav, had gone on leave from her house. Victim enquired from him how he is standing on Beetle Shop, then he put handkerchief on her nose and she became unconscious. She was in Auto. Sanjay and Dhananjay were sitting on her both sides. They brought her to Deoghar. They took her to Deoghar Mandir. Dhananjay gave vermilion on her head. She removed vermilion then accused again put vermilion on her head. Thereafter, they brought her to Station and seated in the female boggy and brought her to Asansol and stayed in a hotel. Thereafter, in the morning Appellant brought her to a house of his relation. On 25.10.2005 they took her to Delhi by train. She reached Delhi on 26.10.2005 at 10.00 PM. They got her seated on Auto on which four persons were sitting. They gave her medicine to eat on 28.10.2005. She awoke on 29.10.2005 at 12 AM. She felt pain in abdomen, her cloth was loose. She found blood and sperm on her panty. She also felt pain in her vagina (private part). Dhananjay was standing there. She suspected on seeing Dhananjay that he has committed rape with her. She enquired from Dhananjay then he



gave threat and told her not to disclose any body and also gave threat that if she will disclose, he will kill all her family members. Dhananjay got several letters written by her forcibly. Dhananjay and Rajesh told to make demand of money from her father and if he will not make payment then they will sell the girl. She talked to her father in Bangla and the accused kept the speaker on. She told her father that she is in Sangam Vihar, Delhi. The police came in the house and arrested Dhananjay. Police recorded her statement. She went to hospital with the police where she was medically examined. She went to Court and thereafter went to house of *Fuaa* along with her father. Thereafter, she came to Bhagalpur with her father. She was again medically examined in Bhagalpur. She also gave statement in Bhagalpur.

18. The victim girl has given statement under Section 164 Cr. P C., which has been marked as Ext.6. She has stated in her statement that on 22.10.2005 she met with her Driver, Dhananjay, at Khalifa Chowk, while she was going for tuition. He had taken leave from her father one day prior to occurrence to go to his house. She was going for tuition and it was raining. She saw Dhananjay and enquired from him then he sat on rickshaw and pressed her mouth with *Roomal* and she became unconscious. She regained consciousness in Banka and she found herself in Auto Rickshaw.



Dhananjay was sitting towards her right and Sanjay was sitting towards her left. Sanjay is *Fufera* brother of Dhananjay. Sanjay used to give tuition to her younger brother. Dhananjay gave threat to her and took her on a Bus and again put *Roomal* on her mouth and she became unconscious. She saw one big watch and enquired from Dhananjay about the place then he told that it is Deoghar. It was raining. It was 7.45 PM at that time in watch. He took her to Deoghar Mandir on foot and told her to do *Pooja*. He took her inside the temple. Sanjay told Dhananjay to give vermillion because they have to go to far place. Dhananjay put vermillion on her head. She removed the same. Then Dhananjay gave threat with dagger and again put vermillion on her head. They brought her to railway station on rickshaw. They got her seated in ladies compartment and both of them also sat in ladies compartment. Sanjay Yadav gave one tablet to take for her protection from cold. She took the tablet and became asleep. They brought her down at Jasidih Railway Station and told that they had to take train for Asansol. They brought her to Asansol and kept her in a hotel. They also stayed in that hotel. She got consciousness in hotel and pushed one of the switches on which Manager of the hotel came and knocked the door. Dhananjay dragged her away from the door and told the Manager that everything is right. She slept in the night. They left hotel in the



morning and Appellant brought her to Haripur in bus. She can read Bangla. On the bus, Haripur was written in Bangla. The Appellant took her to the house of some relative at 9.00 AM. Both were telling the relations as Bhaiya and Bhabhi. They had one younger daughter also. They kept her in that house on 23.10.2005, 24.10.2005 and 25.10.2005. They brought her to Delhi by train. They kept her unconscious on the way in train. She got sense in Aligarh. She reached Delhi at 10.00 PM in the night of 26.10.2005. They did not make her unconscious in Delhi because Sanjay told that if they will make her unconscious then police will suspect. Rajesh told her to talk to her parents on mobile. On 27.10.2005, they forced her to tell her parents that she has voluntarily performed marriage with the Appellant. She told her mother that she is in Sangam Vihar. The Appellant had gone for work on 03.11.2005 and she told the landlord about the incident. Her uncle came on 03.11.2005 with police at 2.30 PM. The police arrested Dhananjay and brought her to Sangam Vihar Police Station. They got several letters written by her. She was brought to Bhagalpur by Bihar Police on 09.11.2005 and handed over to her parents. She was medically examined in Delhi. Medical report of the victim girl has been marked as Ext.4 and 5, wherein, doctor has found no injury mark on her body. No fresh injury or bleeding was seen over her private part. The doctor has



assessed her age to be above 18 years as per radiological opinion.

19. Other witnesses, PW 1, 2 and 4 are father, mother and uncle of the victim. They are all hearsay witnesses. PW 1 and 2 have stated that they have learnt about the occurrence from the victim girl. PW 4 has stated that he heard about abduction of Richa. C.S. Sharma, PW 5, has stated in his evidence that the victim girl did not come to her house on 22.10.2005 for tuition and she remained absent. Medical report of the victim girl has been marked as Ext.4 and 5 (with objection).The doctor has found no injury over her body or her private part.

20. Defence witness, Bishundeo Yadav, DW 1, has produced several letters written by the victim to Dhananjay, which has been marked Ext.A, which shows that girl was knowing the Appellant from before. From Ext. A, it appears that there are several letters written by the victim to the Appellant prior to the occurrence.

21. In this manner, after minutely perusing the evidence of the witnesses especially of the victim girl as well as medical report of the victim, this Court finds that victim girl was major and she was knowing the Appellant from before as he was working as Driver in her house. Several letters have been written by her to the Appellant. From her own evidence in Court as well as statement recorded under Section 164 Cr. P. C., it appears that she



remained with the Appellant from 22.10.2005 to 03.11.2005. It is alleged that the police arrived and recovered her from the house in Sangam Vihar in Delhi where she was kept by the Appellant.

22. In her evidence in Court, she has stated that all the time accused persons made her unconscious after putting handkerchief on her mouth. She has stated that on 29.10.2005 she woke up at 12 AM. She felt pain in abdomen, her cloth was loose and panty contained blood and sperm. She was feeling pain in her vagina (private part) and Dhananjay was standing there. She suspected that Dhananjay Yadav had raped her as she found him in the room, but the Doctor (PW 9) has found no fresh injury over her private part or over any part of her body. The victim was found to be major aged about more than 18 years as appear from the Medical Report (Ext.4 and 5). Although Medical Reports have been marked with objection on behalf of the defence, but the defence has not produced any evidence to prove that aforesaid medical reports are not correct except raising objection at the time of marking the same as exhibits.

23. Therefore, from the evidence of the victim girl in the Court as well as statement under Section 164 Cr. P. C., this Court finds that no force was applied by the Appellant in taking her to different places, rather, she had gone to different places



voluntarily. The victim girl herself has not levelled any specific allegation that the appellant has committed rape with her. In her evidence, she has merely stated that on 29.10.2005, when she got up at 12 AM, she felt pain in abdomen, her cloth was loose as well as panty contained blood and sperm. She was feeling pain in her vagina (private part) and Dhananjay was standing there. She suspected that Dhananjay Yadav has committed rape with her. As such from her own evidence, she has merely raised suspicion against the Appellant that he has committed rape with her. The medical evidence totally falsifies her evidence that her panty contained blood and sperm. She was feeling pain in her vagina (private part). The doctor has not found any injury on her private part and her body. Ext.A series show that victim was knowing the Appellant from before. Several letters written by the victim girl to the Appellant prior to the occurrence were produced during trial by DW 1.

24. The evidence of victim does not prove beyond all reasonable doubt that she had been abducted by the Appellant and he has committed rape with her. Other witnesses examined on behalf of prosecution are hearsay witnesses.

25. Therefore, this Court is of the view that prosecution has not been able to substantiate the Charge against the Appellant for the offence under Section(s) 366 and 376 Indian Penal



Code beyond all reasonable doubt.

26. In view of such, impugned judgment of conviction dated 22.12.2008 and order of sentence dated 23.12.2008 respectively passed by the Additional Sessions Judge, FTC 5, Bhagalpur, in S.T. No.920 of 2006/TR No.88 of 2008 arising out of Kotwali P.S. Case No.729 of 2005, is hereby set aside.

27. Appellant, Dhananjay Yadav, is acquitted of the charges levelled against him. He is on bail. He is discharged from the liabilities of his bail bond.

28. This Criminal Appeal is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

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