

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.331 of 2015**

Arising Out of PS.Case No. -14 Year- 2003 Thana -SHIWAPATHI District- MUZAFFARPUR

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Subodh Kumar Sah, son of Late Ganesh Sah resident of village - Madhaipur, P.S. Siwaipatti, District - Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Mahesh Prasad-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 20-03-2018

Appellant Subodh Kumar Sah has been found guilty for an offence punishable under Section 366A of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for three months vide judgment of conviction and order of sentence dated 30.05.2015 passed by the Additional Sessions Judge-4th, Muzaffarpur in Sessions Trial No.238 of 2005/ 665 of 2014.

2. Anand Kumar Pandey, PW-7, filed written report disclosing therein that his sister, victim (named withheld) aged about 15 years while had gone to meet nature's call on 05.03.2003 at about 4.00 a.m. did not return, whereupon they made hectic search. Being frustrated on that very score, they have lodged Sanha at the Police Station. However, continued in searching her out and during said



course, they came to know that his sister was enticed away by his co-villager Subodh Kumar Sah, son of Late Ganesh Sah with an intention to marry. He took her away at Kolkata at the place of Mahesh Sah, his uncle. Thereafter, he has shifted there from and during whole scenario, the parents of Subodh Kumar Sah, his uncle were actively involved. Furthermore, they have requested them to handover the girl, but they have not paid heed to it.

3. After registration of Siwaipati P. S. Case No.14 of 2003, investigation commenced and during course thereof, first chargesheet was submitted against Mahesh Sah and Rama Shankar Sah, keeping the investigation pending against the appellant after whose appearance, chargesheet was submitted, whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

4. 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 of the occurrence. However, neither ocular nor documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1 Ram Bilas Mahto, PW-2 Bindeshwar Sah, PW-3 Suresh Pandey, PW-4 Ram Kumari Devi, PW-5 Chanchala Kumari, PW-6 victim and PW-7 Anand Kumar Pandey as well as had also exhibited Exhibit-1 fard-bayan. As



stated above, nothing has been adduced in defence at the end of appellant/ accused.

6. So far status of witnesses are concerned, it is evident that PW-1 had simply stated that he came to know that the daughter of Suresh Pandey had gone out. PW-2 had shown complete ignorance regarding the occurrence and so, was declared hostile. The remaining witnesses that means to say, PW-3 Suresh Pandey is the father of the victim while PW-4 Ram Kumari Devi is the mother. PW-5 is sister while PW-7 is the informant/ brother. PW-6 is the victim herself. With regard to evidence of PW-3, PW-4, PW-5 and PW-7, it is needless to say that they all are not an eye witness to occurrence, save and except substantiating missing of the victim and for that, they made hectic search and during course thereof, they came to know that she was enticed away by the appellant Subodh Kumar Sah, their co-villager wherein his other family members were actively involved. Furthermore, the subsequent eventuality came to their knowledge on the pretext of information furnished by the victim (PW-6). In the aforesaid background, the evidence of PW-6 happens to be crucial in order to trace out the complicity of the appellant in consonance with her conduct, status coupled with the appropriate penal provision to be applied in the facts and circumstances of the case. PW-6 had deposed that on the alleged date at about 4.00 a.m., she was at her Maika and was unmarried. She gone outside to meet nature's call while she was



returning, Ramashankar Sah came from behind pounced upon her, tied her mouth and then, threatened and took her to Muzaffarpur where they met with Subodh Kumar Sah. Thereafter, Subodh Kumar Sah took her to Kolkata at the place of his uncle Mahesh Sah where they stayed for 3-4 days and then thereafter, took her back to Muzaffarpur where he kept her in a rented house at Mohalla-Ahiyapur, she remained there for 10-15 days. She was during intervening period assaulted, but nothing wrong was done at his end. Then thereafter, police apprehended, her statement was recorded under Section 164 Cr.P.C. She was medically examined and then, had gone to the place of her parents. In Para-5, she had stated that one year after the occurrence, she has been married. At that very time, she was major. At the time of occurrence, it was winter season, there was densely fog, she had gone to field where maize crop was standing. Then there happens to be cross-examination with regard to event of kidnapping under Paras-7 and 8 of her cross-examination. In Para-9, her attention has been drawn towards statement recorded under Section 164 of the Cr.P.C. whereupon she had stated that out of fear, she had narrated that she had married with Subodh Kumar Sah in a temple. She had further stated that out of fear, she had stated before the Magistrate that she led her life as spouse of Subodh Kumar Sah and wants to stay with him. However, she had stated before the Magistrate that she had voluntarily made statement. In Para-10, there



happens to be corroboration at the end of this witness to her earlier statement made under Section 161 of the Cr.P.C. wherein she had stated that Subodh Kumar Sah happens to be friend of her brother and on account thereof, he was on visiting term and during course thereof, she had fallen in love with him. Then had stated that out of fear, she stated like so. Then, there happens to be contradiction with regard to deposition at the present moment under Para-11. Then had denied the suggestion at Para-13 that she happens to be major and out of free-will, she had married with Subodh Kumar Sah, but out of family pressure, she had deposed like so.

7. Neither I.O. nor doctor has been examined on account thereof, the medical report, if any, relating to status of the victim remained unfurled. It happens to be obligation on the part of the prosecution to substantiate its case. Therefore, it was incumbent upon the prosecution to have properly identified the victim to be minor so that her consent, if any, would be of no consequence. From her handwriting, it is evident that she happens to be literate and in the aforesaid background, at least her date of birth would have been disclosed at the end of witnesses. Be that as it may, from the evidence of the victim itself, it is evident that she was taken to Kolkata without any resistance, she came back from Kolkata without any resistance, she lived with appellant at Ahiyapur for quite long time without any resistance, hitch, protest nor there happens to be any kind of evidence



at her end that she was put under threat of murder or grievous hurt. Furthermore, she happens to be silent over her activity, at least asking for help, or disclosing to the neighbours that she has been kidnapped. That being so, the cumulative effect did not justify the finding recorded by the learned lower Court. That too, in the background of the fact that victim had not deposed that she was kidnapped by Rama Shankar Sah in order to force her to indulge in sexual activity with Subodh Kuma Sah rather the evidence happens to be that he had not done any wrong with her.

8. The ingredients of Section 366A of the I.P.C. speaks with regard to kidnapping or abduction of a minor girl below the age of 18 years with an intention of her being sexually exploited by the others which, from the evidence of PW-6 is found completely absent and that being so, the conviction and sentence recorded by the learned lower Court is not at all found duly substantiated with the evidence available on the record, whereupon same is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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