

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.133 of 2015

Arising Out of PS.Case No. -57 Year- 2007 Thana -RUPAULI District- PURNIA

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1. Badal Kumar Sahni Son of Sri Mahendra Sahani	
2. Dablu Kumar Son of Shyam Lal Sahani Both are resident of Village Rupauli Sahani Tola, P.S. Rupauli, District Purnea	 Appellant/s
Versus	
1. The State of Bihar	 Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh, Adv.
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: 23-01-2018

Learned counsel for the appellants is absent, on account thereof, Mr. Ranbir Singh, learned Advocate has been requested to assist the court as an Amicus Curiae.

2. Heard learned Amicus Curiae as well as learned APP.

3. Appellants Badal Kumar Sahni and Dablu Kumar have been found guilty for an offence punishable under Sections 366A IPC vide judgment of conviction dated 25.02.2015 and each one has been sentenced to undergo SI for 7 years as well as to pay fine of Rs. 5,000/- and in default thereof, to undergo SI for 1 year additionally, vide order of sentence dated 26.02.2016 passed by 2nd Additional Sessions Judge, Purnea in connection with Sessions Trial No. 944/2007/634/2014.

4. PW-2, Jagarnath Sahni who happens to be father of the victim, Shailja Kumari aged about 14 years filed written report



on 21.06.2007 disclosing therein that on returning from his office on 21.06.2007 at about 7:00 PM, his wife Nisha Devi has informed him that their daughter Shailja Kumari who has gone to attend tuition at about 6:00 AM to Nityanand Master. Usually, she returns back at 8.30 AM but as she has not returned upto 10:00-11:00 AM, she sent son, Rajiv Kumar Sahani to the place of Master who, on query, disclosed that Shailja Kumari has not come to his place to take tuition. Then thereafter, his family members began to search and during course thereof, wife of one Gonar Sahani has disclosed that she has seen Shailja Kumari in company of Dablu Kumar, Badal Kumar Sahani and Pankaj Kumar who happens to be relative of Dablu Kumar. He has also gone in search of his daughter and during course thereof, came to know that Badal Kumar Sahani and Pankaj Kumar enticed her away with an ulterior motive.

5. After registration of Rupauli PS Case No. 54/2007, investigation commenced, during course of which, victim was traced out, her statement under Section 164 CrPC was recorded, she was medically examined, witnesses were examined and after concluding the same, charge-sheet was submitted facilitating the trial meeting with the ultimate result, subject matter of the instant appeal.

6. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, neither ocular nor documentary



evidence has been adduced.

7. In order to substantiate its case, prosecution had examined altogether 7 PWs out of whom PW-1, Risha Devi (mother of the victim), PW-2, Jagarnath Sahni (informant), PW-3 Rajiv Kumar Sahni (brother of the victim) PW-4, Bechani Devi(co-villager), PW-5, Dr. Sushila Das, PW-6, Shailja Kumari, PW-7, Vishawanath Singh, Investigating Officer, as well as had also exhibited Ext-1, Signature of informant over written report, Ext-2, Injury report.

8. From the evidence available on the record, it is apparent that two kinds of evidences have been adduced by the prosecution. The first one happens to be that of PWs, 1, 2 and 3 and the second one happens to be that of victim and PW-6. PW-4 had not supported the case of the prosecution while PW-5 is the doctor who had examined the victim PW-7 is the Investigating Officer. That means to say, the evidence of PW-6, PW-7 is to be seen in the background of evidence of the witnesses who are own family members but are inconsistent to each other. The aforesaid circumstance is to be also seen in the background of the fact that right from inception there happens to be specific case of the prosecution that victim Shailja Kumari happens to be minor.

9. Before coming to scrutinize the evidence of the witnesses, independently, it is apparent that neither PW-1, 3 and 3 had



seen the occurrence nor the recovery. Furthermore, it is also apparent that both the parties are co-villagers and that being so, there happens to be non presence of independent witnesses save and except PW-4 who did not opt her inclination towards prosecution.

10. PW-1 during course of her evidence had reiterated the incident of kidnapping/abduction which she knew during course of search and further, complicity of the appellants. She had further stated that victim, after recovery had disclosed that she was kidnapped by the appellants including Pankaj who took her to Kursaila where all of them committed rape upon her. PW-2, her husband had not substantiated the same save and except that on being informed by his wife she made hectic search and during course thereof, he came to know that Dablu and Pankaj kidnapped his daughter and confined her at the place of maternal uncle of Dablu Kumar. He had not stated anything with regard to commission of rape at the end of the appellants along with Pankaj. He had not claimed to have seen the occurrence rather came to know during course of search but not disclosed names of anybody from whom he came know. PW-3 is the brother who had reiterated the version of the PW-2 and then disclosed that the victim was recovered after 20-25 days of the occurrence from the house of Pankaj who happens to be maternal cousin brother of Dablu Kumar. He had further deposed that the victim had disclosed that while she was going to tuition, she was taken away by Dablu,



Badal and Pankaj. He had further stated that he was not told by the victim with regard to subsequent activity, if any, taken up by the accused persons.

11. Now coming to the contrary version, that is of victim, PW-6. She had stated that during course of returning from tuition, she met with Pankaj and Dablu who was known to her since before. She had requested both of them to accompany her to the place of her maternal grand-mother and, without informing her parents, she had gone to her maternal grand-mother and stayed there. While she was staying at her matrimonial grand mother's place, she along with accused were apprehended by the police. She had further stated that accused persons had not committed any kind of mischief with her. At that very time, she was student of Class-IX. On court's question, she had stated that she was arrested along with accused persons from railway station, Purnea. Purnea does not lie in between the way to her maternal grand-mother.

12. PW-7 is the I.O. After registration of the case and entrustment of the investigation, he had visited the place of occurrence which happens to be one hut lying western corner of a soiling road. Furthermore, at para-6 it is evident that he had recovered the victim on 02.07.2007 from R.N. Sah Chowk, while she was alone. In para-8, he had stated that R.N. Sah chowk happens to be within Purnea Town.



13. Consent, in the facts and circumstances, has been taken into consideration by the learned lower court as centre point and further identifying the victim to be minor disowned to identify whereupon, convicted and sentenced the appellants. From the evidence available on the record, it is crystal clear that, more particularly, from the evidence of the victim that appellants had not enticed her away and that being so, there was no question of consent. She had herself requested the appellants along with Pankaj to accompany her to the place of her maternal grand-mother which they did and on account thereof, there happens to be no question of proper recognition of consent vis-à-vis status of the victim being minor.
14. Consequent thereupon, judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.
15. Appellants are on bail, hence are discharged from the liabilities of bail bonds.
16. The first and last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.01.2018
Transmission Date	25.01.2018

