

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.87 of 2009

[Against judgment of conviction and order of sentence dated
08.12.2008 and 12.12.2008 respectively passed by the Additional
Sessions Judge, FTC No.1, Madhubani, in Sessions Trial No.95 of
2008/45 of 2008 arising out of Bisfi P.S. Case No.71 of 2007]

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KARUN GIRI, son of Sri Shiv Shankar Giri, resident of village- Simarri, P.S.-
Bisfi, District- Madhubani

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Thakur, Advocate Mr. Amir Alam, Advocate Mr. Ravi Ranjan-1, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT

Date :13-12-2018

By judgment of conviction and order of sentence dated 08.12.2008 and 12.12.2008 respectively passed by the Additional Sessions Judge, FTC No.1, Madhubani, in Sessions Trial No.95 of 2008/45 of 2008 arising out of Bisfi P.S. Case No.71 of 2007, sole Appellant has been convicted for the offence under Section(s) 366 and 376 Indian Penal Code and sentenced to undergo rigorous imprisonment for six years with fine of Rs.1000/- for the offence under Section(s) 366 Indian Penal Code and rigorous imprisonment for eight years with fine of Rs.1000/- for the offence under Section(s) 376 Indian Penal Code. In default of



payment of fine, the Appellant shall further undergo simple imprisonment for two months. Both the sentences were ordered to run concurrently.

2. The prosecution case, which is based on written report given by the Informant on 22.05.2007, is that on 31.03.2007 at about 4.00 PM, Appellant, Karun Giri, called the Informant by telephone and asked about the whereabouts of her father. When the Informant told him that her father is not in the house, he told her to meet at his house at 7.00 PM. Since Shiv Shankar Giri, father of Appellant, Karun Giri, as well as Appellant were her tutors, so, she went to the house of Appellant where mother of the Appellant offered her a *Laddu* to eat. When half of *Laddu* was eaten by the Informant, parents of Appellant asked her to marry with Karun Giri and to go to Darbhanga. She then began to run away but Appellant and his parents asked her to eat entire *Laddu*. As soon as entire *Laddu* was taken by the Informant, she felt giddiness. Appellant with the help of his parents after giving threat to kill brought her to Darbhanga by a Tempo. She lost her sense. She regained her sense at 3.00 AM, in the night, then she found herself in a room with Karun Giri. It is further alleged that Appellant forcibly established sexual intercourse with her in that night and when the Informant tried to flee away from there, the Appellant



told that there are antisocial elements outside the room and they might misbehave with her. In the morning, one person came and gave injection to her due to which she became semi-unconscious. In the morning of 2nd April, 2007, she found herself at Delhi Railway Station with Karun Giri. She raised alarm there at which the persons standing nearby came and Appellant fled away. Thereafter, the Informant with the help of other passengers came back to her house after three days. It is also alleged that mental and physical condition of the Informant was badly affected. The Informant filed the written report in Police Station after regaining good mental health.

3. In the instant case, total ten witnesses have been examined by prosecution. The victim girl, Sadhna Kumari, (Informant) has been examined in the case as PW 6. She has stated in her evidence that while she was in her house on 31.03.2007, she received telephone call at 4.00 PM from the Appellant to come to his house to meet him for essential work. The victim girl (Informant) went to the house of the Appellant since the Appellant was his tutor. The Appellant along with father, Shiv Shankar Giri and mother, Rekha Devi, were present and sitting. She has further stated that Rekha Devi gave her *Laddu* and when half portion of the said *Laddu* was taken by her, she was told by Radha Devi and



Shiv Shankar Giri to marry with the Appellant and to go to Darbhanga. The victim became surprised to the aforesaid proposal and tried to leave the place, but all the three accused (Appellant) told her to eat all *Laddu* and whatever she desired that will be done. The Informant ate whole *Laddu* and thereafter she became unconscious. She was taken by the Appellant and his parents by Tempo and when she regained consciousness she found herself in a room where Appellant told her that they are at Darbhanga. It was 3'o clock in the morning. The Appellant committed rape with her giving threat to kill her. The Court below has recorded the demeanor of the victim girl at the time of her evidence stating the witness was weeping at the time of giving evidence. This witness has further stated in her evidence that one man came in the room and gave injection by which she became unconscious. She found herself with the Appellant at Delhi Railway Station on 02.04.2007. She raised alarm on which persons of the vicinity came. The Appellant fled away from there. The victim has further stated in her evidence that she returned to her house after three days with the help of other passengers. Her mental condition became unstable. She filed the case against the Appellant with the help of family members after her mental condition improved. The written report filed by the victim has been marked as Ext.2. She has also



stated that her statement was recorded by the Judicial Magistrate under Section 164 Cr.P.C., which has been marked as Ext.1/A. This witness has described, in detail, the manner of occurrence on the point of rape.

4. The Trial Court has noted relevant portion of her deposition as mentioned in para 10 of her evidence in the impugned judgment in Hindi. From perusal of aforesaid deposition of the victim, it appears that she has stated that **“the Appellant had caught hold her both breasts and she sustained injury on her breast. Out of fear, she did not raise *halla*. Thereafter, he established physical relationship with her. She did not raise any alarm out of fear. There was no sign of assault on her lips or cheeks. There was no bleeding from her private parts after physical relationship. The physical relationship continued for about half to one hour. She herself washed her private parts from her clothes. It had become morning after physical relationship”**.

5. Another important witness in this case is father of the victim, Dinesh Thakur, PW 5. He has stated in his examination-in-chief that his daughter was aged 13-14 years at the time of alleged occurrence. She was student of Class VIII at that time. He has stated that Shiv Shankar Giri, father of the Appellant, and the



Appellant were tutors of his daughter. He was informed on 31.03.2007 at 8.00 PM through telephone by his wife that his daughter, Sadhna Kumari, was missing. He reached at his house at 9.00 PM and gave oral information to the police concerned on which the police came in the night and started enquiry into the matter. This witness has further stated that he went to the house of Appellant. His house was locked. He searched his daughter at Railway Station and in the house of relatives of Appellant, but did not find her. He gave written application to the concerned Police Station on 01.04.2007 about missing of his daughter. After three days, his daughter returned to his house. Mental condition of his daughter was not good. When she regained good mental condition, she narrated whole story about her kidnapping and rape committed by the Appellant. Then written report was filed by the Informant before police on which First Information Report was registered. He also put his signature on the written report given by his daughter to the police. Signature of this witness on the written report is marked as Ext.1. This witness has further given evidence with regard to allegation of committing rape by the Appellant on the basis of information received by him through his daughter, Sadhna Kumari, (victim girl). Therefore, aforesaid evidence of this



witness about the offence of kidnapping and rape is hearsay evidence on the basis of information given to him by his daughter.

6. Another important witness in this case is Nutan Kumari (PW 8), elder sister of the victim. She has stated in her evidence that on 31.03.2007 at 4.00 PM when she was in her house along with her sister, Sadhna Kumari, and her mother, a telephone call came, which was received by her sister, Sadhna Kumari, who stated that Sir Karun Giri (Appellant) is calling her. She went to the house of Karun Giri and did not return for one hour. Thereafter, her mother went to the house of Karun Giri. She found the house of Karun locked. Her mother started crying and then villagers, namely, Rakesh, Arvind, Gauri, Kusum, arrived. They told that accused were carrying Sadhna Kumari in Tempo in unconscious condition. This witness has further stated that her mother informed her father, Dinesh Thakur, (PW 5), who reached the house and informed the police. The police came with jeep in the night of alleged occurrence.

7. Mother of the Informant, namely, Heera Devi (PW 7) has been tendered by the prosecution. Therefore, no material cross-examination was done by defence side of this witness.

8. PW 1 to 4 have been examined by the prosecution on the point that they have seen Karun Giri and his parents, Shiv



Shankar Giri and Rekha Devi, taking the victim girl in Tempo in unconscious condition. These witnesses have also stated in their evidence about kidnapping and rape of the victim girl, but those evidence have been given on the basis of information given to them by the victim girl. As such, their evidence on the point of kidnapping and rape is only hearsay evidence.

9. Rakesh Thakur (PW 1) has stated that when he was returning to his house in the evening on 31.03.2007, he saw accused Karun Giri, Shiv Shankar Giri, and Rekha Devi, were carrying Sadhna Kumari on three wheeler.

10. Similar statement has been given by Arvind Thakur (PW 2).

11. Gauri Thakur (PW 3) has been tendered by the prosecution.

12. Kusum Thakur (PW 4) has stated in his examination-in-chief that at about 7.30 PM when he was returning from the village of his married daughter and he was in the way, he saw that Sadhna Kumari, Shiv Shankar Giri, Karun Giri and Rekha Devi were going on Tempo. Tempo was coming from Simri and going towards Rahika.

13. Dr. Rama Jha (PW 9) has examined the victim girl medically and issued Medical Report, which is marked as Ext.3.



According to the Medical Report, age of the victim girl was between 16-17 years on the date of examination, which was held on 23.05.2007. The Medical Board has opined that it cannot be concluded whether rape was done or not. The Doctor has further stated that no any internal or external injury was found on the body of victim. No injury was found on private part of the victim. This witness has stated that report on the point of age is approximate and not accurate. This witness has also stated that nail injury on breast will persist up to one week and colour of said nail injury will persist up to next one to two weeks. In the instant case, no external injury was found on the body of the victim by the Doctor although victim has stated that she sustained injury caused by Appellant on her breasts.

14. Birendra Singh (PW 10) is the Investigating Officer of the case. He has proved Sanha Entry No.1 dated 01.04.2007 as Ext.4 and the original application given by Dinesh Thakur, father of the victim, on 01.04.2007 as Ext.5. This witness has stated that he recorded statement of witnesses and also visited the place of occurrence. This witness has stated first place of occurrence is house of the Informant and second place of occurrence is house of the accused.



15. The Defence has examined four witnesses in support of its case.

16. Lal Jha (DW 1) has stated that there is no way of jeep or tractor near the house of accused Karun Giri. He has also stated that there was no cordial relationship between the family of Dinesh Thakur and Karun Giri for last 10-12 years.

17. Laxmi Kant Mishra (DW 2) has stated that no occurrence of kidnapping or rape took place. He has stated that he is villager and he never heard about the occurrence.

18. Radha Kant Mishra (DW 3) has stated that Primary Health Center is situated at half kilometer away from the house of Dinesh Thakur.

19. Ganpati Thakur (DW 4) has stated that he is uncle of Dinesh Thakur. He never heard and saw the occurrence of kidnapping and rape ever happened with Sadhna Kumari. This witness has admitted that he has no good relation with the family of Dinesh Thakur and Shiv Shankar Giri.

20. In the instant case, Court below has convicted the Appellant for the offence under Section(s) 366, 376 Indian Penal Code.

21. The necessary ingredients for the offence of kidnapping under Section(s) 366 Indian Penal Code is that (i) that



she was kidnapped or abducted from the custody of lawful guardian, (ii) she was kidnapped and abducted with intention to compel her to marry any person against her will, or in order that she may be forced or seduced to illicit sexual intercourse. Similarly, definition of rape has been described, in detail, in Section 375 Indian Penal Code.

22. From entire evidence of prosecution, it appears that victim girl, Sadhna Kumari (PW 6) is the only eye witness of the case with regard to offence of kidnapping and rape against the Appellant.

23. All other witnesses examined on behalf of the prosecution are hearsay witness of having heard about the manner of kidnapping and rape from the victim girl.

24. The victim girl has given, in detail, in her evidence in para 10 about the manner of occurrence on the point of rape, which has also been quoted by the Trial Court in the impugned judgment in Hindi.

25. From perusal of her evidence in Court, it appears that she claimed that she sustained injuries by nail of the Appellant on her breast at the time of commission of occurrence, but doctor has not found any injury of nail on her breast or any external part of the body. It further appears from her evidence on the point of rape



that she never raised any objection. She did not resist to entire occurrence of physical relationship for the period of half to one hour. She has stated in her evidence in para 10 that she washed her private part by clothes and it became morning after physical relationship.

26. The Court below has taken the view that since girl was minor then consent was immaterial and manner of occurrence described by the victim proves that Appellant has established physical relationship with her and that will complete the offence of rape.

27. In this respect, Dr. Rama Jha (PW 9), who has examined the victim, has proved the Medical Report (Ext.3). As per First Information Report, the victim gave the written report on 22.05.2007 and she was medically examined on 23.05.2007. The Doctor has assessed her age between 16-17 years on the date of examination. The Doctor did not find any injury on her private part. The Doctor (PW 9) has stated nail injury on breast will persist up to one week and colour of said nail injury will persist up to next one to two weeks. As per evidence of the victim girl, she had gone to the house of Appellant after receiving his telephone call on 31.03.2007 at 4.00 PM. She has stated that she was offered *Laddu* to eat by the mother of Appellant. Thereafter, she was told to marry



with Appellant. She ate all *Laddu* and became senseless. She was taken by the Appellant and his parents by Tempo and when she regained consciousness she found herself in a room along with Appellant. He told her that they are in Darbhanga. He also stated that there are members of antisocial elements outside the room, so, she could not run away from the room. Thereafter, Appellant committed rape with her after giving threat to kill her. She described the entire manner in which occurrence of rape was committed by the Appellant with her in para 10, which has been quoted, in detail, in Hindi by the Trial Court in the impugned judgment.

28. Dinesh Thakur (PW 5) has stated in his evidence that he gave written application on 01.04.2007 about missing of his daughter and after three days his daughter returned to his house. Her mental condition was not good. When her mental condition improved then she narrated the story of kidnapping and rape by the Appellant. Thereafter, written report was filed by the victim/Informant.

29. From the First Information Report, it appears that written report was filed by the Informant on 22.05.2007 after delay of more than one and half month after returning of the victim to



her house. Father of the victim has stated that victim voluntarily returned after three days.

30. The sister of victim, Nutan Kumari, (PW 8) has stated in her evidence that on 31.03.2007 at 4.00 PM when she was in her house along with her sister, Sadhna Kumari, and her mother, a telephone call came, which was received by her sister, Sadhna Kumari. She stated that Sir Karun Giri (Appellant) is calling her. She went to the house of Karun Giri and did not return for one hour. Thereafter, her mother went to the house of Karun Giri. She found the house of Karun Giri locked. This witness has further stated that her mother informed her father, Dinesh Thakur, (PW 5), who reached the house and informed the police. The police came with jeep in the night of alleged occurrence.

31. As such, the evidence of aforesaid prosecution witness show that victim had gone to the house of Appellant herself after receiving telephone call of the Appellant on 31.03.2007 and she did not return. Mother of the victim, Heera Devi, went to the house of Appellant and found the house locked. She informed her husband, Dinesh Thakur, who reached the house and informed the police on 01.04.2007. The mother of the victim, Heera Devi, has been tendered by the prosecution in Court and no material cross-examination of this witness was done.



32. The prosecution has produced four witnesses i.e. P.Ws. 1 to 4 to show that victim was found going on Tempo with the Appellant. This story for the first time was brought by the prosecution in the evidence of Nutan Kumari (PW 8), wherein, she has stated that her mother started crying and then villagers, namely, Rakesh, Arvind, Gauri, Kusum, (PW 1 to 4) arrived. They stated that accused persons were carrying Sadhna Kumari in Tempo in unconscious condition. But, mother of the victim, Heera Devi, has not supported such statement of Nutan Kumari (PW 8) in Court in her evidence. She has been tendered for cross-examination.

33. Investigating Officer (PW 10) has stated in his evidence that he received *Sanha* of Dinesh Thakur on 01.04.2007 and made *Sanha* entry, which has been marked as Ext.4. He has further stated that he inspected the place of occurrence. First place of occurrence is house of the Informant and second place of occurrence is house of accused. The police did not make any investigation with regard to statement of victim girl that she was taken to Darbhanga and Delhi by the Appellant by force. There is also no investigation with regard to victim having been taken to Darbhanga by the Appellant, where, he has committed rape with her. The Investigating Officer has also not taken any clothes from



the victim, which was worn by her at the time of occurrence, for its scientific examination.

34. This Court finds that the Trial Court merely on presumption that victim was minor and she has described, in detail, in para 10 of her evidence, the manner in which physical relationship was established by the Appellant with her, offence of kidnapping under Section(s) 366 Indian Penal Code and rape under Section(s) 376 Indian Penal Code are proved.

35. This Court finds that the evidence, which have been brought by the prosecution on record, as discussed above, are not sufficient to prove the ingredients of offence under Section(s) 366 and 376 Indian Penal Code beyond all reasonable doubts.

36. In terms of Section 375 Indian Penal Code, “A man is said to commit rape, who has sexual intercourse with a woman against her will”.

37. In the instant case, from the evidence of victim girl (PW 6), it is apparent that sexual intercourse was committed for half to one hour. She herself washed her private parts from her clothes after the act. She did not raise any alarm. It had become morning after physical relationship.

38. The Doctor has found the age of the victim between 16-17 years. The Doctor (PW 9) has not found any external injury



either on private part or on body of the victim girl. The Doctor has further stated in cross-examination in para 3 that when a virgin minor girl submits herself for sexual intercourse, injury will be caused to her private part.

39. In the instant case, Doctor has not found any injury either external or internal on the body of the victim or her private part. Hymen was found old ruptured. The Doctor on the basis of pathological and radio-logical examination has concluded her age between 16-17 years.

40. The victim girl (PW 6) has stated in her evidence that she herself went to house of Appellant after receiving his phone call. Similar statement has been given by sister of the Informant, Nutan Kumari (PW 8), who was sitting along with victim at the time of occurrence. Nutan Kumari (PW 8) has stated that her sister went to the house of the Appellant after receiving his telephone call.

41. In view of such, this Court finds that prosecution has not been able to substantiate the Charges against the Appellant for the offence under Section(s) 366 and 376 Indian Penal Code beyond all reasonable doubt.

42. Accordingly, impugned judgment of conviction and order of sentence dated 08.12.2008 and 12.12.2008 respectively



passed by the Additional Sessions Judge, FTC No.1, Madhubani,
in Sessions Trial No.95 of 2008/45 of 2008 arising out of Bisfi P.S.
Case No.71 of 2007 is hereby set aside.

43. The Appellant is acquitted of the charges levelled
against him. He is discharged from liabilities of his bail bond.

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

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	19-09-2018
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