

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.609 of 2016

Arising Out of PS.Case No. -173 Year- 2012 Thana -JAGDISHPUR District- BHAGALPUR

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1. Nand Kishor Singh son of Churaman Singh resident of Village- Barhari, P.S. Goradih, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Praveen Kumar Agrawal, Advocate

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-05-2018

Appellant Nand Kishor Singh has been found guilty for an offence punishable under Section 363 I.P.C and sentenced to undergo R.I for 5 years as well as to pay fine of Rs.2000/- in default thereof, to undergo SI for two months, additionally, under Section 366 I.P.C and sentenced to undergo R.I for 5 years as well as to pay fine of Rs.2,000/-, in default thereof, to undergo SI for two months, additionally, under Section 376 I.P.C and sentenced to undergo R.I for 7 years as well as to pay fine of Rs.5,000/- in default thereof, to undergo SI for three months, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 27.06.2016 and order of sentence dated 28.06.2016 passed by the 1st Additional District & Sessions Judge, Bhagalpur, in Sessions Trial No.978/2013.

2. Lal Bihari Mandal filed written report on 24.11.2012,



addressed to O/C, Gauradih, disclosing therein that Nand Kishor Singh, who was engaged by him as an electrician, began to tease his daughter PW-6 (name withheld) aged about 15 years, during course of going/coming from school, whereupon his wife had scolded him. He had threatened his wife that he will run away with his daughter. At that very time, he was at Faridabad. When his wife informed him, over which he came to his house on the occasion of Chhath. His daughter, victim (name withheld), while had gone to school on 21.11.2012, kidnapped by the Nand Kishor Singh, who is himself married and is a father of 3-4 children, with a bad intention or to get himself married. He made hectic search, but could not succeed. He had also mentioned mobile number of Nand Kishor Singh as 9631872870.

3. After registration of Jagdishpur (Gauradih), P.S Case no.173/2012, investigation commenced and during course thereof, I.O was informed regarding location of the victim at Ludhiyana, where she was taken away by the accused and both of them have been taken into custody by the Ludhiyana Police whereupon, the I.O had gone there and brought both of them, victim was medically examined, her statement under Section 164 Cr.P.C was recorded and then thereafter, completing the investigation, charge-sheet was submitted facilitating the trial meeting with ultimate result, subject matter of instant appeal.



4. Defence case as is evident from the statement recorded under Section 313 Cr.P.C as well as mode of cross-examination is conflicting one. At one instance, there happens to be suggestion that victim had herself married with the appellant/accused and had led happy marital life staying for 3-4 months with him and then thereafter, under the duress of her family members got the appellant involved, on the other hand, it has also been suggested that while accused was engaged as mason during construction of house of the informant, had heavy dues and only to digest the same, the informant got this case filed projecting the victim. However, neither oral nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs, who are PW-1, Gun Sagar Mandal, PW-2, Ravi Devi, PW-3, Arjun Mandal, PW-4, Lal Bihari Mandal, PW-5, Kavita Devi, PW-6, Victim, PW-7, Angad Kumar Singh, PW-8, Dr. Sima Sinha and PW-9, Ramjee Prasad, I.O. Side by side, had also exhibited the following documentary evidence i.e. Ext.1, signature of informant over written report, Ext.1/1, endorsement over written report, Ext.1/2, another endorsement over the written report, signature of victim over statement recorded under Section 164 Cr.P.C, Ext.3, medical report, Ext.4, formal FIR. As stated above, neither oral nor documentary evidence has been adduced on behalf of the defence.



6. While assailing the judgment of conviction and sentence, it has been submitted by the learned counsel for the appellant that prosecution case as projected appears to be farce. To substantiate the same, it has been submitted that FIR is ante-dated. Written report was filed on 24.11.2012. Case was registered on 24.11.2012, but it had reached at the office of the CJM on 29.11.2012, that means to say, beyond the period of 24 hours, casting doubt over its authenticity. Furthermore, it has also been submitted that as per evidence of PW-1 Gun Sagar Mandal, who happens to be the uncle of the informant and was living at Ludhiyana, where victim alongwith appellant is said to have been arrested by the Ludhiyana Police, had stated that 2 and ½ days have covered in arrival at Bhagalpur from Ludhiyana. As per evidence of PW-9, Ramjee Prasad, I.O, he had gone to Ludhiyana on 05.12.2012, then in that event, there was no possibility of the victim to be present before doctor on 08.12.2012. It has also been submitted that although, there happens to be disclosure that victim along with appellant was recovered at Ludhiyana, but is not supported by a chit of paper. If the aforesaid eventuality is seen in the background of delay in forwarding the FIR to the Court of CJM, it has become crystal clear that the same happens to be ante-dated and purposely been introduced to digest the due amount which the informant carried as, appellant was engaged by him as a mason as



well as an electrician. In the aforesaid facts and circumstances of the case, as well as taking into account the totality of the event, it is a fit case wherein appellant should be acquitted.

7. Furthermore, it has also been submitted that this case should be seen through another angle. From the evidence of PW-8, Dr. Sima Sinha, only to help the prosecution she had opined that the victim was below 18 years. Having fluctuation of two years plus-minus, victim should be on the alleged date of occurrence below 20 years. So she was major. When her activity is perceived, it is apparent that she had not raised alarm while going from the P.O village to Ludhiyana through train and is indicative of the fact that she was a consenting party. Not only this, while she was staying with the appellant at Ludhiyana, she had not raised alarm, protested against activity of the appellant and those things are sufficient to undo the allegation so attributed at the end of the victim that she was kidnapped or she was not a consenting party. In the aforesaid facts and circumstances of the case, appellant could not be held liable for kidnapping of the victim and in likewise manner, to be a rapist.

8. On the other hand, it has been submitted at the end of the learned APP that from the statement recorded under Section 313 of the Cr.P.C, it is evident that at one stroke, appellant had admitted presence of victim along with him, but failed to suggest that she was



major. On the other hand, appellant had also taken a plea that as prosecution party borrowed dues while procured service of appellant whereupon appellant had been implicated by way of alleging that he had eloped with the victim and in the aforesaid background, when the evidence of PW-6, victim is gone through it is apparent that appellant had not been able to stake or diminish credibility of her evidence. That being so, appellant has rightly been convicted and sentenced.

9. From the material available on the record, it is evident that none of the witnesses have claimed to have seen the victim being kidnapped at the end of the appellant. Though, the previous conduct of the appellant had been detailed, disappearance of the victim since 21.11.2012 had also been disclosed and on account thereof, having been vigorously searched out but failed to trace her out and then, disclosure by the PW-1, Gun Sagar Mandal, that he had seen the victim during course of search at Ludhiyana as the basis of information furnished by his brother, informant whereupon, Ludhiyana Police was informed who came, apprehended both of them, kept Nand Kishor Singh (appellant) at local Hajat, while victim was let off on the personal bond of PW-1 and then arrival of the local police personnel and then, carrying both of them, is found duly exposed along with the fact that from the lower Court ordersheet dated 08.12.2012, it is evident that appellant was produced before the



Court of the CJM. It is further evident that the evidence of the witnesses, more particularly that of , PW-2, Ravi Devi, PW-3, Arjun Mandal, PW-4, Lal Bihari Mandal, PW-5, Kavita Devi and PW-7, Angad Kumar Singh, relating to kidnapping as well as rape having committed at the end of the appellant is found based upon disclosure having been made by the victim (PW-6). So, the evidence of PW-1, Gun Sagar Mandal, PW-6, Victim, PW-8, Dr. Sima Sinha and PW-9, Ramjee Prasad, I.O, have got primacy.

10. PW-1, Gun Sagar Mandal had deposed that the occurrence is of about 10 years ago. He was working at Ludhiyana. He got information from his brother that Nand Kishor had taken away his niece and he had an information that they are at Ludhiyana. Probable location was given by his brother, whereupon he had gone and seen his niece. Then, he informed the police. Police came and apprehended Nand Kishor and his niece. Then, thereafter, the police of Gauradih, Bhagalpur, came to Ludhiyana and took away both of them. Identified the accused. During cross-examination at para-2, he had stated that he is not remembering the exact date on which he received information from his brother. He disclosed his SIM number, but could not divulge the SIM number of his brother. Then, at para-4, had stated that he is not remembering on which date he had seen his niece along with the accused. In para-5, he had stated that firstly he



had located his niece and then police was informed. Police came after an hour and took them away. In para-6, he had stated that he along with police personnel, niece and accused came to Bhagalpur. It covered 2 & ½ days. They got down from Punjab Mail at Kuil Station. He is not remembering the exact date on which he reached at Bhagalpur. He had denied the suggestion that he is not residing at Ludhiyana and had deposed falsely. He had denied the suggestion that his statement was not recorded by the police.

11. PW-6 is the victim. She had deposed that the occurrence is of dated 21.11.2012. She proceeded to school from her house at about 8:00 a.m. Nand Kishor met in the midst of way, who made obscene talk whereupon, she disclosed the event to her mother after returning from the school. Her mother scolded Nand Kishor over mobile, whereupon Nand Kishor threatened that he will lift her daughter. He also threatened that he will kill all of them by shooting. Her mother became afraid of over aforesaid threatening. She intimated to her father, who was at Faridabad. He rushed from Faridabad. On the fateful date, she during course of returning from school had stayed at Kotwali Chowk and had gone to stationary shop to purchase some articles and thereafter, while she came over the road, Nand Kishor came from behind, gagged her mouth, lifted her and took her inside a tempo and then to Naugachiya and then to Ludhiyana, where,



confined her in a room, where he committed rape on her. Subsequently, he put vermillion. His uncle Gun Sagar, who was staying at Ludhiyana, since before was informed by her father regarding the misfortune and further probable place where she might had been confined by the accused, her uncle came and after locating, informed the police, whereupon police apprehended Nand Kishor as well as she was also recovered from his clutch. They both were kept at police station. Then, thereafter, his father along with police, lady police, came and took them away. Nand Kishor was sent to jail while she was medically examined and then, her statement was recorded under Section 164 Cr.P.C. Identified the accused.

12. During cross-examination, at para-9, she had admitted that accused Nand Kishor was engaged as mason for construction of her house. Then, there happens to be cross-examination from para-10 to para-14 with regard to places from where students were coming to the school, timing of the school, whether she had any friend or not. In para-15, she had stated that on the alleged date and time of occurrence as she stayed at Kotwali Chowk to purchase the articles on account thereof, her friend proceeded ahead. She had further stated that she had purchased one pen and copy, but is unable to disclosed the name of the shop. In para-17, she had stated that tempo was parked at some distance from the shop. In para-18, she



had stated that at that very time only one tempo was there, wherein she was lifted by the accused Nand Kishor, after gagging her mouth and on account thereof, she could not see its registration number. She had further stated that her face was wrapped on account thereof, she could not see whether the driver was an old or a young fellow. At that very time, 2-3 more persons sat inside the tempo. In para-19, she had stated that during course of statement before the police, she had stated that apart from Nand Kishor, 2-3 unknown persons also sat. In para-20, she had stated that tempo proceeded towards the Jagdishpur, but she is unable to say whether village Hatt is being organized at Jagdishpur and in likewise manner whether Durga Puja festival was being organized there. Then, said that she is unable to disclose the exact time at which hour the tempo arrived at Jagdishpur. Then was taken to Bhagalpur and then to Naugachiya. She is unable to disclose the exact time. In para-25, she had stated that she was taken to Ludhiyana from Naugachiya by train. They boarded the train outside station premises. She is unable to disclose whether it was a dark night or a moonlit night. Then, had said it was a goods train. It had not stopped anywhere. She after spending whole night, whole day, whole night and then at 8:00 am reached at Ludhiyana. In para-26, she had stated that she remained hungry for two days. She used to go to lavatory. Then at para-27, she had stated that she is unable to disclose



the exact time consumed from station to the place of accused. In para-28 she had stated that she is unable to disclose how many rooms were there where she was kept, but large number of rooms were there. She was kept in a room occupied by Nand Kishor. Others, who also came, gone to their own place. His uncle had not come to meet with her. In para-29, she had stated that Ludhiyana police had recovered her from the room of Nand Kishor. She is unable to say the name of police station where she was kept. She remained there whole night and whole day. Nand Kishor was also there. At that very time, no paper was prepared relating to them. Subsequently thereof, the police of Bhagalpur came at that police station and then, she along with Nand Kishor were taken to Bhagalpur. Her father was also along with the police. She is not remembering the train. She is not remembering at which station she got down. From station they came to Gauradih. In para-30 she had stated that whatever been stated by her in the Court was based upon the incident which she faced. She had denied to have stated before the police that accused had married with her in a temple. She was medically exercised at Mayaganj Hospital. She had denied the suggestion that she had made the statement before the police that Nand Kishor married with her at the temple. Then, at para-34 she had denied the suggestion that she was neither kidnapped nor raped. As her parents borrowed his dues on account of work done by the Nand



Kishor, so only to digest that amount, this case has been falsely filed wherein she had deposed falsely.

13. PW-8, Dr. Sima Sinha, who had examined the victim on 08.12.2012 at Sadar Hospital, Bhagalpur. During course of examination, she had not found any kind of injury over her body including over her private part. However, had found hymen old ruptured. In the aforesaid background, she had opined that there happens to be absence of evidence of recent intercourse though previous indulgence is found. Furthermore, she had opined the age of the victim to be less than 18 years. During cross-examination she had categorically stated that victim would not be above the age of 16 years.

14. PW-9, Ramjee Prasad, is the Investigating Officer. He had deposed that on 24.11.2012, he was S.I at Gauradih P.S, on which date, after registration of the case, on the written report of Lal Bihari Mandal, he was entrusted with the investigation of Jagdishpur (Gauradih), P.S Case no.173/2012, (exhibited all concerned documents). Recorded further statement of the informant, statements of the other witnesses, inspected the place of occurrence. Recorded statements of other witnesses, procured birth certificate. Recovered victim along with the accused Nand Kishor Singh from Ludhiyana. Both were interrogated. Victim was examined under



Section 164 Cr.P.C. She was medically examined and then, after concluding the investigation submitted the charge-sheet. During cross-examination at para-3, he had stated that he had not verified the birth certificate from the school. He had not recorded statement of Khusbu and Anju, who had accompanied the victim to the school from the village. In para-5 & 6, he had stated that he proceeded to Ludhiyana on 05.12.2012, reached at 06.12.2012 and then returned back along with the victim and accused, but he had not mentioned in the case diary by which train he had gone there and in likewise manner returned therefrom. He had not taken the statement of the doctor regarding the age of the victim. Then had denied the suggestion that investigation happens to be cryptic one.

15. The other witnesses as found are not eye witnesses to occurrence, rather they came to know about the same during course of search of the victim and further, with regard to kidnapping, rape on the disclosure made by the victim which the victim had corroborated.

16. Although, there happens to be absence at the end of the accused/appellant during course of cross-examination of PW-6, victim, on the score that during course of transit as well as staying at Ludhiyana whether she had raised alarm for her rescue, protested against evil design of the accused. On the other hand, she on her own



had not disclosed that she had ever resisted. Furthermore, though with regard to the activity of accused at an earlier occasion whereunder he had teased her and being scolded, on that very score threatened but, during course of kidnapping, there happens to be no disclosure at her end that she was threatened or on the pretext of fire arm or any other event prejudicial to her interest or interest of her family, she was taken away to Ludhiyana and, during course of stay, she was locked or forbade to meet with others, more particularly in the background of disclosure having at her end that there were so many rooms (para-28). So her conduct speaks otherwise.

17. In the aforesaid background, when the activity of the appellant has been perceived, it is evident that he had not challenged that he along with victim was not arrested from Ludhiyana. Though, learned counsel for the appellant had challenged on that very score that it was not possible in the background of evidence of PW-1, Gun Sagar Mandal, but he had not claimed the victim to be major coupled with the fact that he had not accepted during course of suggestion given to the victim that being major, she was a consenting party and joined hands with him voluntarily. Moreover, during course of statement under Section 313 Cr.P.C, he took one of the grounds apart from other that she married with him about 3 months ago. The evidence of doctor during course of cross-



examination appears to be more assertive with regard to minority of the victim.

18. Giving proper evaluation of the evidences available on the record, it is found and held that prosecution has been able to substantiate its case for the offences punishable under Sections 363 I.P.C as well as 376 I.P.C. Considering the evidence of the victim, no offence under Section 366 I.P.C is made out, whereupon is set aside. Because of the fact that the minimum sentence has been prescribed against the appellant by the learned lower Court on account thereof, the same is affirmed. That being so, the instant appeal is found merit-less and is accordingly dismissed.

19. Appellant is under custody, which he will remain till saturation of the sentences.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01/06/2018
Transmission Date	01/06/2018

