

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1249 of 2016

Arising Out of PS.Case No. -197 Year- 2012 Thana -GHOSI
District- JEHANABAD

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Anandi Kumar son of Sri Krishna Prasad Resident of Village-
Keshopur, P.S.- Telhara, District- Nalanda.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

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Criminal Appeal (SJ) No. 87 of 2017

Arising Out of PS.Case No. -197 Year- 2012 Thana -GHOSI
District- JEHANABAD

=====

Vikash Kumar @ Nitish Kumar Son of late Janardan Singh
Resident of Village-Keshopur, P.S.-Telhara, District-Nalanda

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1249 of 2016)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Ms. Abha Singh, APP

(In CR. APP (SJ) No.87 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Mr. Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 16-07-2018

Both the appeals have been heard together and are



being disposed of by this common judgment.

The appellants have been convicted under Section 366(A) with the aid of Section 34 of the Indian Penal Code by judgment dated 21.11.2016/22.11.2016 passed by the learned 5th Additional District & Sessions Judge, Jehanabad in Sessions Trial No. 78 of 2013/105 of 2015 and by order dated 25.11.2016 they have been directed to undergo rigorous imprisonment for a period of seven years, to pay a fine of Rs. 10,000/-(ten thousands) and in default of payment of fine, to further suffer imprisonment for one year. From the amount of fine, Rs. 5000/- (five thousands) has been directed to be paid to the victim and the rest of the amount is to be deposited in the Legal Services Authority.

The appellants have been charged for having abducted/kidnapped the niece of the informant (P.W. 6), a minor, aged about 13-14 years.

The prosecution case is based on the F.I.R lodged by Vijay Sharma (P.W.6), an uncle of the victim. He has alleged in the F.I.R that on 13.09.2012, while he along with his brother/Ram Uday Sharma (P.W. 1) was going to an animal fair, he met the appellants, who were coming on a motorcycle. The appellants are stated to have asked the informant about his nephew viz. Amar. On query from the appellants, they are said to have told the informant and his brother that they were going



to purchase motorcycle. They came back home at about 7:00 O' Clock in the evening when it was found that niece of the informant was not available in the house. An enquiry was made in the neighborhood, but to no avail. On 14.09.2012, a telephone call was received in the house and the caller disclosed that he is one of the friends of appellant/Vikash Kumar @ Nitish Kumar. On asking about the victim, the aforesaid caller disclosed that appellant Vikash Kumar @ Nitish Kumar knows about it. On this information, the informant met appellant/Vikash Kumar @ Nitish Kumar and asked him about his niece. He appeared to be quite tensed and assured the informant that in a day or two he shall furnish concrete information. The appellant/Vikash Kumar @ Nitish Kumar is further stated to have told the informant that he shall also enquire from appellant/Anandi Kumar and let the informant know about the victim. The informant thereafter visited the house of the appellant/Anandi Kumar but did not find him there. No case was lodged for about three days for the fear of spoiling of the family reputation but since no information about the victim was forthcoming, the case was lodged on 17.09.2012.

The informant has categorically stated in the F.I.R that the victim was a student of standard IX and a minor. The parents of appellant/Anandi Kumar and one Raj Aryan did not extend any support nor did they help the informant in tracing



the victim and therefore, the informant suspected that even they are responsible for the kidnapping of the victim.

On the basis of the aforesaid written report lodged by the informant/P.W. 6, a case vive Ghoshi P.S. Case No. 197 of 2012 dated 17.09.2012 was instituted for investigation under Section 366(A) of the Indian Penal Code.

The police after investigation submitted charge-sheet against the appellants whereupon cognizance was taken and the case was committed to the Courts of Sessions for Trial.

The learned Trial Court, after examining eleven witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellants as aforesaid. The other accused persons were tried by the Juvenile Court.

Mr. Ajay Kumar Thakur, learned advocate for the appellants has submitted that the conviction and sentence of the appellants under Section 366(A)/34 of the Indian Penal Code is highly unjustified and unwarranted. There is no evidence with regard to the abduction/kidnapping of the victim for the purposes of marrying or for confining her or for selling her. In that event, even if she was abducted from the lawful guardianship of her parents, at best, the appellants could be held guilty under Sections 363 and 365 of the Indian Penal Code and not under Section 366(A)/34 of the Indian Penal Code.

Additionally, Mr. Thakur submitted that even from the



depositions of P.W. 1 who is the father of the victim, the victim herself who has been examined as P.W. 5 and the informant P.W. 6, it becomes apparent that appellant/Anandi Kumar was known to the family of the victim from before and that he was a regular visitor to the village of the informant and the victim. The circumstances which could be garnered from the deposition of the witnesses, it has been argued by Mr. Thakur, clearly indicate that the victim had voluntarily gone with the appellant/Anandi Kumar to Delhi where she stayed for some time and later she was brought back by the appellant/Anandi Kumar. Had it not been the case, it has further been stressed, the appellant/Anandi Kumar would not have taken the risk of reaching the victim to Patna Kotwali Police Station on his own.

It has also been submitted that the victim/P.W. 5 has, all along during her deposition maintained that she was never sexually assaulted and was kept in a hotel where she was provided food. All that she has said against the appellant/Anandi Kumar is that his behaviour towards her during the period of confinement was not good. However, she has not given any incidence of bad behaviour.

The victim not making any hue and cry at several places where there were congregation of people, further confirms the fact that she was not abducted/kidnapped against her will and desire. She knew that she was going to Rajgir and



from there to Delhi but never did she raise any objection. Admittedly, the victim was not gagged nor was administered any intoxicating substance for her not to understand that where she was being taken. In that view of the matter, her deposition before the Court even though she is a minor, is to be seen with much care and circumspection.

In order to appreciate the contentions raised on behalf of the appellants, it would be necessary to first refer to the deposition of the victim, who has been examined as P.W. 5.

She has stated before the Court that on 13.09.2012 while she was at her village home viz. Choti Akauna, one village girl viz. Anni Kumari called on her mother's mobile phone and talked to her. She wanted her to visit Rajgir to which the victim initially declined. Later, on the insistence of the aforesaid Anni and her brother Ankur, she agreed to go with them to Telhara from where she was to go by a vehicle to Ekangarsarai. Anni excused herself and asked her to accompany her brother Ankur. With Ankur, the victim went to Telhara where she met one Raj Aryan and appellant/Vikash Kumar @ Nitish Kumar. Ankur informed her that aforesaid two persons also would accompany them to Rajgir. Not seeing Anni there, the victim asked Ankur to take her back home, but again on the insistence of the aforesaid persons including the appellant/Vikash Kumar @ Nitish Kumar, she agreed to go to Ekangarsarai on a motorcycle. At



Ekangarsarai, she was brought to the Railway Station and was made to sit in a boggie of a train. Appellant/Anandi Kumar was available in the boggie from before. She was left in the company of appellant/Anandi Kumar. When she wanted to raise *hulla*, appellant/Anandi Kumar is said to have threatened her that if she made any noise, she would be thrown out from the train. She was thereafter taken to Delhi and was kept in a hotel where she was threatened on daily basis that if she protested, serious consequences would befall. Many persons used to visit appellant/Anandi Kumar in the hotel and victim sensed that an effort was being made to sell her in the market. She always insisted for coming back home. After about 7-8 days, appellant/Anandi Kumar brought her to Patna Railway Station and thereafter to Kotwali Police Station. Appellant/Anandi Kumar wanted to run away after leaving her at the Police Station, which fact was narrated by her to the Police. Her statement was taken by the Police in the Police Station. She was brought to Ghoshi Police Station by the Kotwali Police and thereafter her statement was recorded under Section 164 of the Code of Criminal Procedure.

During her cross-examination, she has stated that she did not ask anybody at home for going to Rajgir as nobody was available at home. At Telhara Bazar, there is always a crowd and a police station also is situated there. She did not raise any *hulla*



at the time when she was made to sit on a motorcycle at Telhara Bazar for going to Ekangarsarai as she was under the impression that the accused persons were taking her to Rajgir as promised to her. The motorcycle was being driven by appellant/Vikash Kumar @ Nitish Kumar and she sat in the middle. She had initially shown her reluctance to board the train but she was forcibly made to sit in one of the boggies. She has admitted that there was a huge crowd in the train but she did not raise any protest nor did she tell anybody that she was being taken to another place without her will. About 10-15 people were traveling in the same compartment in the aforesaid train. She never made any attempt to get down from the train as appellant/Anandi Kumar had caught her hand. The train had stopped at Patna Railway Station also. She reached Delhi after about two days and saw Police personnel at the Delhi Railway Station also. There also, she did not tell anybody that she was brought to Delhi without her will. She was taken to a hotel on an auto-rickshaw where also she did not tell any person about her having been kidnapped. After about 7-8 days, she was brought back to Patna and was taken to the Patna Kotwali Police Station.

Though in her cross-examination, she had denied knowing appellant/Anandi Kumar from before but such statement, it has been argued, does not appear to be correct in view of her absolute acquiescence in going out with the



appellant/Anandi Kumari to as far a destination as Delhi which took around one and half days by train journey. None of the passengers in the train also raised any eyebrows seeing her young age.

The persons who visited appellant/Anandi Kumar in the hotel never talked in her presence. It was only on one or two occasions that somebody talked to him in her presence which made her assess that perhaps some preparation was being made for selling her in the market. She did not inform about this to anyone of the waiters/workers employed in the hotel nor to the Manager. She has also stated at one place in her cross-examination that appellant/Anandi Kumar never took her to College. For seven days that she was made to stay in the hotel in Delhi, there was no sexual contact with appellant/Anandi Kumar but his behaviour towards her was not good.

The learned counsel for the appellants has submitted that this sequence of events clearly reveal that appellant/Anandi Kumar was known to the victim and she had accompanied him to Delhi of her own volition without there being any pressure upon her or threat given to her.

Had it not been the case, she had plenty of opportunities to have the attention of the passengers and others drawn. Her keeping quiet while going to Ekangarsarai on motorcycle and thereafter boarding the train to Delhi speaks



volumes about the correctness of the version made by the victim.

Be that as it may, it was seriously argued by Mr. Thakur, learned advocate for the appellants that if there was any intention of the appellants to subject the victim to any sexual misdemeanour, nothing prevented him from doing so. The allegation of making attempts at selling her in the market for immoral purposes also does not get established from her deposition. She was never shown to any customer nor was she made to go to any place outside the hotel where she stayed. She has not stated about any encounter with any person which could give an impression to her that she was about to be sold in the market. She was served food on time. She has not stated that she was being guarded by anybody in the hotel room. If that be so, she had an opportunity of telling the waiter or anybody who came to give her food that she was kept in confinement against her desire.

Thus, the story of her having heard that she is likely to be sold does not appear to be trustworthy. If the intention would have been, even remotely, to sell her, she would have been left behind at Delhi. No effort/risk would have been taken by the appellant/Anandi Kumar to bring her to Patna and thereafter to the Police Station, where her statement was recorded.

The father of the victim viz. Ram Uday Sharma has



been examined as P.W. 1. He has narrated the same story what the informant as stated in the F.I.R. However, he has stated that on 22.09.2012 he learnt that his daughter has been brought to the Patna Kotwali Police Station by appellant/Anandi Kumar. He did not go to Patna Kotwali Police Station to meet his daughter. The daughter was brought to Ghoshi Police Station by Patna Kotwali Police. His daughter informed him that she was made go to Telhara with Anni and Ankur whereafter she was taken to Ekangarsarai and from there to Delhi. She was kept in confinement for about seven days. The appellants had met P.W. 1 on 13.09.2012 and had talked to him also. He also admits that Ankur and Anni are studying in the same school as that of the victim. On coming to know about his daughter going missing, he did not inform the Police in the beginning. In his cross-examination, he has stated that appellant/Anandi Kumar used to come to the house of one Nawal Sharma, a co-villager much prior to the occurrence. His deposition also gives an inkling that appellant/Anandi Kumar was not an unknown person. In this background, the deposition of the victim does not appear to be correct that she saw appellant/Anandi Kumar for the first time in train when she was left in the boggie alone by appellant/Vikash Kumar @ Nitish Kumar and others.

Similar statement has been made by Abhishekh Kumar @ Manikesh Kumar, who is the maternal uncle of the victim and



who has been examined as P.W. 2.

Nitu Devi, mother of the victim has been examined as P.W. 3. She has admitted of Anni Kumari calling on her mobile and talking to the victim. She was aware that the victim had gone with Anni Kumari. When she did not come back till late in the evening, then a search was made. Only after the recovery of her daughter, she could know that she was taken to Delhi and was kept in confinement. Her information therefore is of no consequence as all information about the occurrence was provided to her by her daughter (victim). She also has admitted that her statement was taken by the Police only after the recovery of her daughter.

Another uncle of the victim viz. Ram Unay Sharma has been examined as P.W. 4 who also is a hearsay witness and has claimed to know everything through his relatives who in turn were apprised about the occurrence by P.W. 5/Victim.

The informant has been examined as P.W. 6. He has, in his cross examination admitted that in course of search of the victim, he had visited the house of appellant/Anandi Kumar but he was found missing from his house. He has also clearly stated that only later, he learnt that the victim and appellant/Anandi Kumar had themselves come to Patna Kotwali Police Station. Though he has denied that appellant/Anandi Kumar ever came to his house but has informed the Court that appellant/Anandi



Kumar used to come to his village.

Admittedly, the victim was minor at the time of the occurrence. Her abduction from the lawful guardianship of her parents constituted the offence of kidnapping. But from the evidence collected, the offence of kidnapping for the purposes of procuration or to compel her for marriage has not been established.

The Investigating Officer of this case viz. Mithilesh Kumar Mishra has been examined as P.W. 8. He was informed on 22.09.2012 by the Officer-in-charge at Ghoshi Police Station that the victim as well as appellant/Anandi Kumar has come to the Patna Kotwali Police Station. He went to the Patna Kotwali Police Station and brought the victim to Ghoshi Police Station. From the possession of the appellant/Anandi Kumar, the keys of the hotel room was recovered. Though the same was seized by him but no reference of it has been made in the case diary.

What is relevant in the deposition of P.W. 8 is that on deeper enquiry by P.W. 8 about the call details of telephone numbers of the family members of the victim and the appellant/Anandi Kumar, he came to learn that there had been continuous conversation between the appellant/Anandi Kumar and the relatives of the victim. This also buttresses the contention of the appellants that the victim was not abducted for the purposes of selling her in the market or subjecting her to



sexual intercourse or for compelling her to consent for marriage.

Thus, from a careful analysis of the deposition of the witnesses and the materials collected during trial, what comes to the fore is that the victim, being a minor was taken away from the lawful guardianship of her parents, thereby making the offence complete as against the appellants under Sections 363 and 365 of the Indian Penal Code

In the absence of any material suggesting that the aforesaid kidnapping or abduction was for the particular purposes of subjecting the victim to sexual intercourse or for forcing her for marriage, the conviction of the appellants under Section 366(A)/34 of the Indian Penal Code cannot be justified/warranted.

For the aforesaid reasons, the verdict of guilt returned by the Trial Court under Section 366(A)/34 of the Indian Penal Code is set aside. The conviction of the appellants is converted under Sections 363 and 365 of the Indian Penal Code.

This Court has been informed that appellants have remained in jail for about more than two years.

In the opinion of this Court, taking into account the overall circumstances and the background of the parties, interest of justice would be sufficiently met if the appellants are sentenced for both the offences for the period of custody which they have already undergone.



Thus, the conviction of the appellants is converted from Section 366(A)/34 of the Indian Penal Code to one under Sections 363 and 365 of the Indian Penal Code. The sentences for the aforesaid offences are reduced to the period of custody which they have already undergone.

The appeals are partially allowed to the extent as indicated above.

The appellants are in custody. They are directed to be released forthwith, if not wanted in any other case.

A copy of the judgment be transmitted to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20/07/2018
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