

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.304 of 2015

Arising Out of PS.Case No. -65 Year- 2010 Thana -MAKHDUMPUR District- JEHANABAD

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1. Vikram Kewat S/o Late Raghunandan Kewat R/o vill. - Tehta Mallah Toli, P.S. Makhdumpur, Tehta, P.O., Distt. Jehanabad

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar, Adv.
Mr. Mushtaque Alam, Adv.

For the Respondent/s : Mr. Z.Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 14-03-2018

Vide judgment of conviction and sentence dated 29.04.2015, passed by Additional District & Sessions Judge-IV, Jehanabad in Sessions Trial No. 21/2014, appellant, Vikram Kewat has been found guilty for an offence punishable under Section 363 IPC, and sentenced to undergo RI for 5 years as well as to pay fine appertaining to Rs. 25,000/- and in default thereof, to undergo SI for one year additionally.

2. Chhote Mallah, PW-6, filed a complaint petition no. 169/2010 against Vikram Kewat, (appellant) Raghunandan Kewat, Binod Kewat and Arti Devi for an occurrence committed on 16.02.2010 divulging the fact that he along with his wife had gone to Patna on 16.02.2010 leaving behind their daughters, Soni Kumari, Priti Kumari and other children. After their return from Patna on



17.02.2010, they found Soni Kumari aged about 15 years missing whereupon they inquired from Priti who disclosed that on 16.02.2010 at about 7.00 PM, Vikram, Rahul and Binod came at her house and took away Soni. Arti Devi was also present at Darwaza who accompanied her towards her house. Then thereafter, She slept. On the following morning, she had not found Soni whereupon she had gone to the place of Arti where none was present. On this information, he had gone to the place of accused whereupon he saw other family members who, on query regarding Soni became enraged as a result of which, he became very much apprehensive. He made hectic search to trace out Soni and having failed to trace her out, files this case having some delay.

3. The aforesaid complaint was directed to be instituted and investigated by the concerned police station as provided under Section 156(3) of the CrPC whereupon, Makhdumpur PS Case No. 65/2010 was registered, followed with an investigation, during course of which victim was recovered, medically examined, under Section 164 CrPC, witnesses were examined and then, charge-sheet was submitted against Vikram Kewat and Rahul Kewat exonerating Binod Kewat and Arti Devi whereupon the trial commenced and concluded meeting with ultimate result, subject matter of instant appeal.



4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that it was the victim being major one who coerced the appellant/accused to accompany her and that being so, no offence has been committed at the end of appellant.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs, those are, PW-1, Victim herself, PW-2, Vidya Nand Paswan, PW-3, Dr. Murli Manohar, PW-4, Munni Devi, PW-5, Priti Kumari, PW-6, Chhote Kewat, PW-7, Manju Devi, PW-8, Dr. Renu Singh and PW-9, Ganesh Sharma. Side by side had also exhibited Ext-1, Signature of victim over statement recorded under Section 164 CrPC, Ext-2, X-ray report, Ext-3, Signature of informant over written report, Ext-4, Medical report, Ext-5, endorsement over written report, Ext-6, Formal FIR. Neither oral nor documentary evidence has been adduced on behalf of defence.

6. Learned counsel for the appellant while questioning the finding recording by the learned lower court has advanced his argument on the score of status of the victim. It has been submitted that as per evidence of PW-3, age of the victim has been estimated in between 16-17 years. It happens to be collusive opinion as is evident from Modi's Medical Jurisprudence that age estimation having on the basis of radiological finding varies 2 years either side



and that being so, the age befitting with the plea is to be admitted and accepting the same, the age of the victim became 18-19 years. That being so, she happens to major. When the evidence of the victim PW-1 is gone through, it is evident that victim happens to be the consenting party, that being so, acknowledging her status to be major, no offence is made out. That being so, the conviction and sentence recorded by learned lower court is found non sustainable in the eye of law.

7. In an alternative, it has also been submitted that accepting that there happens to be some sort of slackness during course of cross-examination of PW-1, victim whereunder she was not at all cross-examined on the score of her majority or minority, even considering that during course of cross-examination, she was not confronted with the statement recorded under Section 164 of the CrPC, even then, it will not cast any infirmity on account of considering of conduct of the victim. That being so, the finding recorded by the learned lower court would not justify its validity. Then it has been submitted that the learned lower court was very much conscious with regard to conduct of the victim inconsonance with her status and that being so, under para-23 of the judgment, reliance at the end of learned lower court over age having been estimated in the written report as well as by the learned Magistrate



while regarding statement of the victim under Section 164 CrPC, is found to be not at all permissible in the eye of law. Then it has been submitted that statement recorded under Section 164 CrPC does not happen to be a substantial piece of evidence, it happens to be only for the purpose of corroboration or contradiction. Prosecution had not cared to corroborate the same save and except while deposing the victim she had disclosed that at the time of making statement under Section 164 CrPC, she was afraid of, side by side, there also happens to be some sort of deficiency at the end of appellant whereunder the statement having been recorded under Section 164 CrPC was not confronted to the victim and that being so, for the purpose of adjudication that statement goes out of purview. Even then, inconsistency having in the written report inconsonance with the evidence of the respective witnesses including that of victim did not justify the conviction and sentence recorded by the learned lower court whereupon the same is fit to be annulled.

8. On the other hand, learned APP counter meeting with the submission made on behalf of appellant, has submitted that in the present case, there happens to be no legal impediment as the status of the victim happens to be that of minor irrespective of whatever been estimated by the doctor PW-3 being contrary to the direction having been given by the Apex Court and that being so, consent



became immaterial. As such, the finding recorded by the learned lower court happens to be fit to be confirmed.

9. Whatever direction has been given by the Hon'ble Apex Court in ***Jernail Singh v. State of Haryana*** reported in **2013 Cr.L.J. 3976**, and subsequent thereof happens to be enforceable from the date of judgment i.e. from July 1st 2013 and the events meeting prior thereto would not be influenced by the same. That being so, steps whatsoever been taken even found contrary to the aforesaid direction, prior to pronouncement of that judgment will be legal, and that being so, finding having been recorded by the PW-3, Dr. Murli Manohar happens to be duly cognizable in the eye of law. As per Modi's '*A Textbook of Medical Jurisprudence and Toxicology, 24th Edition*', at page 238, it has been held that age ascertainment on the basis of ossification of bones varies within a margin of 2 years mainly on the progress of the epiphyseal union (ossification test) and so the status of the victim, giving such relaxation appears to be major.

10. Now coming to the evidence of the victim who has been examined as PW-1, it is evident that on 24.02.2010 at about 7.00 PM while she was at her house, Arti Devi came at her house, at that very time, her brothers, sister were present. Her parents had gone to Patna. Arti took her to her house where Binod Kewat and Vikram Kewat were present. Arti had disclosed to her to marry with her



brother which she denied whereupon all the three threatened her then, she accompanied with them to Ludhiyana where she remained for two months. They have not indulged in doing any sort of wrong to her. Then, she returned back to her house. Subsequently, police took her away. Her father had instituted a case. Then thereafter, she was taken to court where she was examined under Section 164 CrPC. At the time of her statement she was frightened. Then she was remanded to remand home where she stayed for a year and then, coming therefrom, she is along with her parents. Identified her signature over her statement under Section 164 CrPC. Identified the accused.

11. During cross-examination at para-7, she had disclosed that Vikram took her away from her house at 7.00 PM. In para-8, she had stated that she had gone to Ludhiyana on the same day. Only Vikram had gone along with her. She had boarded the train at Gaya on the instruction of Vikram. She had further stated that during midst of way, he had threatened. In para-9, she had stated that she had not raised alarm during intermediary period that she was being kidnapped. She had further stated in para- 10 that they resided in a rented house at Ludhiyana. She had further disclosed that they got married at Ludhiyana. In para-11, she had stated that she along with Vikram returned back to her house. They came to court. Vikram surrendered in the court while she was taken away by the police. In



para-13, she had stated that she had filed petition before the court that they got married. In para-14, she had stated that she had made wrong statement in the court. Then had denied the suggestion that there was no kidnapping. She on her own accompanied the accused. Got married but being pressurized by her family members, falsely deposed.

12. Considering the evidence of the victim, the detailed discussions of the other witnesses became immaterial in the background of the fact that PW-2 happens to be part Investigating Officer doing nothing substantial while PW-9 is the Investigating Officer who had substantiated the version of PW-1 so far her presence is concerned, PWs-4, 6 and 7 is based upon the discloser of PW-5, Priti Kumari, younger sister of the victim. When her evidence is taken, she had shown presence of Vikram, Rahul, Binod and Arti at her house and then, taking away the victim which is found inconsistent with the version of the victim.

13. The conduct of the victim is found duly exposed in the background of the fact that during journey she had not raised alarm and in likewise manner, while she was staying with the appellant in a rented house at Ludhiyana for quite a long time, approximately for two months. Had she not been a consenting party, at least, some resistance would have been expected at her end which,



she completely ignored. Moreover, in para-10, it is evident that she on her own disclosed that she had married with the appellant and in para-11, she had stated that she along with appellant came back from Ludhiyana and in para-12, she had stated that they both came up before the court where Vikram surrendered while she was taken away by the police and in para-13, she had stated that she had filed petition before the court disclosing the fact that she had already married with appellant.

14. In the aforesaid facts and circumstances of the case, considering the status of the victim to be major coupled with her conduct while enjoying company of the appellant, does not justify the finding recorded by the learned lower court. That being so, the judgment impugned is set aside. Appeal is allowed.

15. Since appellant is on bail, he is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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