

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.537 of 2015

Arising Out of PS. Case No. -140 Year- 2011 Thana -Bhagwan Bazar District- Saran

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Prakash Chauhan @ Prakash Kumar Beldar, Son of Sri Sita Ram Beldar, resident of Mohalla- Sanarat Nagar Chas Nala, P.S.- Dhanbad, District- Dhanbad.

.... **Appellant/s**

Versus

The State of Bihar

.... **Respondent/s**

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Appearance:

For the Appellant/s : Mr. Sanjay Kumar Singh, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-08-2018

Appellant, Prakash Chauhan @ Prakash Kumar Beldar vide judgment of conviction dated 03.08.2015 and order of sentence dated 11.08.2015 found guilty for an offence punishable under Section 366 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.8000/- in default thereof, to undergo S.I. for three months additionally by the Additional Sessions Judge, IVth, Saran at Chapra in Sessions Trial No.950 of 2011/894 of 2014.

2. Chandra Bhushan Pandey (PW.1) who happens to be father of the victim (name withheld) filed written report on 20.09.2011 disclosing therein that he is a retired CRPF Personnel. He had gone to Delhi along with his wife on 03.09.2011 leaving behind his daughter-in-law, Punam Devi and the victim along with son Pradeep Kumar Pandey. On 14.09.2011, his daughter-in-law informed that his daughter (victim) is not present at the house



whereupon, he along with his wife returned back. On query, his daughter-in-law had disclosed that on 14.09.2011 at about 03:00 AM when she woke up found the victim missing. Then she began to search and during course thereof, found the main door opened. She had gone inside the room of the victim but, was absent. Further, it has also been disclosed that she had taken away ornaments, cash appertaining to Rs.50,000/-. So, he showed his suspicion against Prakash Chauhan to have enticed her away. It has also been disclosed that victim happens to be a minor. It has further been disclosed that while he was posted at Sindari, Prakash Chauhan was classmate of his daughter and used to visit at his quarter.

3. After registration of Bhagwan Bazar P.S. Case No.140/2011, investigation commenced and during course thereof, victim was traced out, her statement under Section 164 Cr.P.C. was recorded, she was medically examined and then, after completing the investigation charge sheet was submitted which happens to be the basis of trial, meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.p.C. is that of complete denial. It has also been pleaded that victim was a major and was a consenting party that being so, no offence has been committed to justify the prosecution.

5. Prosecution had altogether examined six PWs who are PW.1-Chandra Bhushan Pandey, informant, father of the victim,



PW.2-Sheela Devi, mother of the victim, PW.3 is the victim, PW.4-Pratik Kumar Pandey, brother of the victim, PW.5-Mithlesh Kumar, Investigating Officer and PW.6-Dr. Jayshree Prasad who had examined the victim. Side by side had also exhibited, Ext.1-Written Report, Ext.2-Signature of the victim over statement recorded under Section 164 Cr.P.C., Ext.3-Endorsement over written report, Ext.4-Formal FIR, Ext.5-Medical Report. Defence had also examined two DWs, DW.1-Pawan Kumar and DW.2-Guru Charan Kohili as well as had also exhibited, Ext.A, A/1, B, Signature of victim, Advocate as well as notary public over the affidavit and also marked 'X', X/1, X/2, X/3 and X/4, photograph (positive) as well as Admit Card for identification.

6. While challenging the judgment of conviction and sentence recorded by the learned lower court, it has been submitted at the end of the learned counsel for the appellant that Punam Devi, daughter-in-law of the informant was the witness who could have divulged the real fact but, the reason best known to the prosecution she has not been examined. It has further been submitted that if the evidence of the witnesses is taken together, then in that circumstance, it has become crystal clear that the victim on her own, after opening the main gate slipped with cash as well as ornaments which is indicative of the fact that she was a consenting party. From the conduct of the victim PW.3, it is evident that though during course of evidence she had tried to disown but, the evidence on that very score is very much clear expliciting her inclination more particularly in the background of the fact that she had categorically



stated that she received call on a mobile belonging to his *Bhabhi* that means to say Punam Kumari. This theme indicates that the appellant was very much known since before with regard to SIM number and further, was conversant with the victim as well as her family members and that happens to be reason behind that purposely, intentionally Punam Devi has not been allowed to depose in this case by the prosecution. Had there been, the intimate relationship in between alleged victim with the appellant since before would have been exposed nullifying the allegation.

7. Apart from this, it has also been stated that manner whereunder PW.3 had stated regarding her disappearance, unless and until being a consenting party would not have materialized as, there was no occasion for her to come outside her house having a bag bearing cash as well as ornaments on a call made by the appellant over mobile talking to the *Bhabhi*. So, the finding of the learned lower court on that very pretext is not at all found to be properly appreciated. Furthermore, it has been submitted that from the admit-card, the date of birth of victim is shown as 16.08.1993 and so, she was major. The aforesaid finding is found further corroborated from the medical evidence. Apart from this, it has also been submitted that from the evidence of PW.1 as well as PW.5, it is evident that victim along with appellant were apprehended from a room where they were sleeping conjointly. Not only this there happens to be nothing on record disclosing resistance, protest at the end of victim during intervening period has raised suspicion over her version what ever been deposed in court, which she stated after on



being influenced by her parents, otherwise, her statement under Section 161 Cr.P.C. is quite contrary to the same. On account thereof, the finding recorded by the learned lower court is not at all sustainable in the eye of law.

8. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that learned lower court after meticulous exercise recorded the finding which is based upon the facts persisting on the record. So, the same is fit to be confirmed.

9. Before coming to the evidence of PW.1, PW.2 & PW.4, the evidence of PW.3 victim is to be seen at a first instance. During course of her deposition she had stated that in the night of 14.09.2011 at about 10:00 PM a call was received at the mobile of his *Bhabhi* whereupon she inquired who is speaking. The caller disclosed his name as Prakash Chauhan belonging to Sindari. She was knowing him since before as, she was a student at Sarswati Vidya Mandir where he was also studying. Then he disclosed that his belongings have been stolen away so, he is in need of money. She disclosed that her parents are not present as they have gone to Delhi however, she instructed to come with an assistance. She will give the money. He came near her house and again dialed whereupon she came outside along with her purse. She had paid Rs.500/- whereupon he demanded Rs.500/- more which she had also given. Then thereafter, he offered chocolate. Just after chewing the same, she felt dizziness, and then became unconscious. When



she regained sense, she found herself in a taxi. She became nervous. She inquired from him and then perceived, she was at Dhanbad. Then she had checked her purse, she found her ornaments, cash missing. Then, she began to weep. Then they gone to hotel took breakfast and again became unconscious. When she regained sense, she found closed in a room. Then, thereafter, Prakash Chauhan began to threat that she will be murdered. Then in case she resists she disclosed that after taking meal as each occasion she became unconscious. She remained under unconsciousness during majority of time. Then she came to Chapra, took bath, then gone to Magistrate Saheb where she made statement over which, she had put her signature. During cross-examination at para-2 she had admitted that while she was studying at Sindari during course of posting of her father, Prakash Chauhan was her classmate. She not seen his house. She had further stated that she came out with a purse having cash, ornaments. At that very time, she was painting Godrej. It was 10:00 P.M. *Bhabhi* had gone to sleep she was watching T.V. mobile of *Bhabhi* was on a table. He called her outside whereupon, came out along with purse, handed over money. Talked about ten minutes and then swallowed chocolate which was provided by the accused. Then had shown ignorance over the fact that she had said remained outside at one month and fifteen days as, she was being confined in a room. As she was not properly conscious, on account thereof, she is unable to say who rescued. She had further stated that she met with police inspector and lady constable at Chapra during course of medical examination. She had



further stated that she had not made statement before the police. She had further stated that after medical, she had gone to the place of her parents on 14.09.2011. Her statement was recorded before the Magistrate on 24.01.2011. She had further stated that she took bath at the Police Station itself. She had further stated that she inquired why she was being kept at Police Station whereupon her father disclosed that you have been rescued from the house of Prakash Chauhan. He had also stated that he, with the help of police, procured her presence. She again stated that she had not made statement before the police. Then had shown complete ignorance with regard to manner of recovery from the house of the Prakash Chauhan. Then had denied her previous statement given before the police. Then was controverted with previous statement in detail. She had further stated that putting under threat of life Prakash Chauhan had taken signature on different papers, took photographs, ornaments were forcibly put over her body. She had denied the suggestion that being major she was a consenting party and joined hands with the Prakash Chauhan on her own, voluntarily.

10. PW.1, PW.2 are the parents. Admittedly, they were not an eyewitness to the occurrence as they were at Delhi. Whatever been disclosed at their end happens to be on the basis of information having been at the end of their daughter-in-law, Punam Devi who has not been examined. They have further disclosed that victim was recovered from the house of Prakash Chauhan after one month and seven days. They have also disclosed that during course



of conversation with their daughter, she disclosed that she was taken away under deceitful manner as well as administering sedative substance through chocolate. She had also disclosed that she was raped. Furthermore, it has also been stated by them that at the time of occurrence, she was aged about 15 ½ - 16 years. During cross-examination PW.1 had admitted Prakash Chauhan to be classmate of the victim. He had further stated that he came to know the name of Prakash Chauhan after disappearance of the victim which was scribe in a copy having mobile number. He had further admitted that he had not presented the aforesaid copy before the police nor he had mentioned mobile number in the written report. In para-5 he had stated that he had gone to Dhanbad along with police, at the house of accused but they were not present. Again, at an interval of 15 days, they have gone. They have found the victim who along with Prakash Chauhan were apprehended wherefrom, both were taken to Chapra. Then had denied the suggestion that victim was major and she had accompanied the Prakash Chauhan on her own. PW.2 had not identified the accused during course of her evidence and further stated that after being informed by her husband, she came to know that Prakash Chauhan had enticed away the victim.

11. PW.4 had stated that when he woke up in the morning of 15.09.2011 he found the victim missing whereupon he inquired from his *Bhabhi* and then, they both searched and found the main door of the house open. Then thereafter, parents were informed. Then had identified the accused as on the pretext that he was knowing him since before as he was also studying at Sarswati Vidya



Mandir, Sindari. During cross-examination he had stated that he is not knowing where they both were on talking term or not. Then there happens to be contradiction.

12. PW.5 is the Investigating Officer who had stated that after registration of the case, he was entrusted to the investigation. Recorded further statement of the informant. Inspected the place of occurrence which happens to be the house of the informant. He recorded statement of Punam Devi, wife of the informant, Prateek. He had also recorded statement of the victim. Then had produced her before the Magistrate, she was medically examined. During course of cross-examination he had stated that during course of recovery of the victim, she along with Prakash Chauhan was found inside a room while they were sharing a bed conjointly. Her statement was recorded at that very place in presence of her father she was fully conscious and then previous statement of victim was confronted to him which he admitted.

13. PW.6 is the doctor who had found hymen old ruptured, vagina admitting two fingers and so opined to be accustom to sexual intercourse. Her age has also been assessed in between 18-19 years.

14. By way of examination of three DWs, defence had exhibited photographs (positive), affidavit having shown by both the parties claiming themselves to be married as well as the admit-card of Class-VIII disclosing the date as 16.08.1993.

15. During course of cross-examination of the victim, the defence neither cared to cross-examine the victim with regard to



the admit-card more particularly confining the date of birth as 16.08.1993 as well as, whether there happens to be board examination at the stage of Class-VIII. And further, it happens to be in the different pen and in likewise manner, the year of examination is also not specified. That being so, the so-called admit-card loses itself reliability and in likewise manner, the sanctity of the affidavit because of the fact that the affidavit has been sworn by the so alleged victim whereupon, the notary public should have been examined to say whether victim on her own had sworn the affidavit. Apart from this, the contents of the affidavit speaks otherwise, not at all concerning the instant episode. So far admissibility of positive photograph is concerned, neither photographer has been examined nor its negative has been exhibited. Hence, again the same has been become in admissible in the eye of law. On this pretext, when the evidence of PW.1 and PW.2 have been gone through, it is evident that PW.1 though had stated in his examination-in-chief that at the time of occurrence she was aged about 15 ½ - 16 years, but no cross-examination was made on that very score save and except suggesting that at the time of occurrence, the victim was more than 19 years of age and in likewise manner, PW.2 her mother who had categorically stated in her examination-in-chief the date of birth to be 16.11.1995. It is pertinent to note that medical evidence regarding ascertainment of age of the victim has been deprecated by the Apex Court as held in **Jarnail Singh Vs. State of Haryana** reported in **2013 Cr.L.J. 3976** and in **State of Madhya Pradesh vs. Anoop Singh** reported in **(2015) 7 SCC 773**. That being so, the



victim was minor below the age of 18 years irrespective of her status to be a consenting party as is evident from her conduct.

16. Section 366 reads as follows:-

“366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid]”

17. Section 10 of the IPC defines the men and woman. It speaks man denotes a male human being of any age the word woman denotes a female human being of any age. Under Section 366 of the IPC there happens to be presence of woman and so, as per Section 10 of the IPC, it does cover a minor also.

18. Be that as it may, the evidence of the victim happens to be of primacy and is to be considered, accordingly. That being so, the ingredients having enumerated under Section 366 of the IPC is not at all found duly saturated after going through the evidence of PW.3, the victim save and except, her status to be minor, though a consenting party, is found properly placed.

19. Accordingly, the finding recorded by the learned lower court relating to Section 366 of the IPC is not at all found properly



substantiated at the end of prosecution. However, considering the status of the victim to be minor, taken out from the careful custody of her parents and that being so, appellant is found guilty for an offence punishable under Section 363 of the IPC. Furthermore, considering the conduct of the parties, sentence is reduced to already undergone. Appeal is partly allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
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