

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1 of 2013

Arising Out of PS.Case No. -34 Year- 2007 Thana -RAHUI District- -

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Avinash Kumar Verma S/o Late Arjun Prasad R/o Patasang, P.S-Rahui, District-Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Niranjan Prasad Singh, Advocate

For the State : Mr. Ashok Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 19-01-2018

The present appeal was preferred against the judgment of conviction dated 23.11.2012 and sentence dated 27.11.2012 passed in Sessions Trial No. 148 of 2009 by the learned *Ad hoc* Additional District and Sessions Judge No.-I, Nalanda at Bihar Sharif in Sessions Trial No. 148 of 2009 arising out of Rahui (Bhagan Bigha) P.S. Case No. 34 of 2007. By the said judgment the appellant herein has been held guilty for the offences punishable under Section 366A of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 5,000/- and in default thereof it has been further directed that the appellant will undergo rigorous imprisonment for one year.

2. Short facts of the case is that on the basis of the fardbeyan of the informant namely Malti Devi dated 01.03.2007 an FIR vide Rahui (Bhagan Bigha) P.S. Case No. 34 of 2007 was registered on 04.3.2007 for the offences under Section 366A/34 of the Indian Penal Code against eight accused persons, including the appellant herein. It was alleged by the informant that on 01.03.2007 at about 4:00 A.M. in the morning she along with her daughter Kavita Kumari had just come outside the gate of her house for the purposes of going for natural call, then the accused persons namely Avinash Kumar Verma, Deepak Kumar



Verma, Manju Devi, Munna Verma, Jitendra Sao, Upendra Sao, mother of Jitendra Sao and Gauri Shankar Sao, who were standing there from before, kidnapped the daughter of the informant namely Kavita Kumari with bad intention. Upon alarm being raised by the informant, her son Lovely Kumar and co-villager Ranjeet Singh, Ajay Singh, Munni Singh, Dharmdeo Singh and Biran Singh came there. The FIR was lodged against the aforesaid eight accused persons.

3. The case was investigated and charge sheet was submitted by the Police dated 31.03.2007 against the appellant herein only, finding the case to be true as against him. After completion of supply of police papers, the case was committed to the court of sessions on 17.02.2009, whereafter the charges were framed against the appellant herein under section 366A of the Indian Penal Code.

4. During the course of trial the prosecution has examined all together nine witnesses to prove its case. P.W. 1 is Biran Singh, P.W. 2 is Arvind Singh, P.W. 3 is the victim namely Kavita Kumari, P.W. 4 i.e. Suraj Kumar is the brother of victim girl and P.W. 5 i.e. Pankaj Kumar is also the cousin brother of the victim girl, P.W. 6 Malti Devi is the informant of this case while P.W. 7 namely Kripa Sagar is the Investigating Officer of the present case, P.W. 8 is Dr. Krishna Devi Singh who is said to have examined the victim girl and P.W. 9 i.e. Shri Dharendra Mishra is the then Judicial Magistrate, Bihar Sharif who had recorded the statement of the victim girl under Section 164 of the Code of Criminal Procedure.

5. I have heard the learned counsel for the parties and besides going through the materials on record have also perused the evidence. At this juncture, it would be relevant to discuss the evidence led by the prosecution.

6. P.W. 6 namely Malti Devi is the informant of this case and she has stated in her evidence that the occurrence dates back to 01.03.2007 at about 4:00



A.M. in the morning when she had just opened the gate of her house for the purpose of going to the toilet and the accused persons were sitting there from before. It is further stated that the appellant herein had pointed a pistol on the head of the informant and had abducted her daughter whereafter all the accused persons had taken her daughter away. Upon alarm being raised by the informant, the co-villagers namely Biran Singh, Arvind Kumar, Pankaj Kumar, Suraj Kumar and others had arrived there and had chased the accused persons but the accused persons managed to flee away without being caught. P.W. 6 has identified her fardbeyan and the same has been marked as Exhibit-B. In her cross-examination, the informant has stated that at the time when she and her daughter were going to the toilet, she had woken up all children. It has also been stated that the night was dark. P.W. 6 has also stated in her cross-examination that when her daughter had come back to the Police Station, the appellant herein was also with him. P.W. 6 has denied the suggestion that her daughter Kavita had a love affair from long time with the appellant herein and since she was going to marry her daughter with one Bhola Singh, her daughter had ran away with the appellant and had gone to Delhi.

7. P.W. 7 is the Investigating Officer of the present case namely Kripa Sagar and he has stated in his examination-in-chief that he was the Officer In-Charge of the **Bihar Sharif** (Bhagan Bigha) Police Station on 03.03.2007 and has identified the formal FIR which has been marked as Exhibit-1. The endorsement on the FIR has also been identified by the P.W. 7 and the same has been marked as Exhibit-2. P.W. 7 has stated in his examination-in-chief that the victim girl namely Kavita Devi had stated in her statement made before him that she had voluntarily ran away from her house alone and had gone to Delhi by Shramjivi train where she had performed marriage and was living with the appellant as



husband and wife.

8. P.W. 8 is Biran Singh who is an independent witness and he has stated that upon alarm being raised he had reached the place of occurrence and had seen that the victim was being taken away by the appellant herein. However, he failed to disclose the date and day of the occurrence. This witness has further stated that his statement was not recorded by the Police.

9. P.W. 2 is Arvind Singh who is also an independent witness and a co-villager and he has stated that upon hearing the alarm of "*thief-thief*" he ran and went near the house of Malti Devi whereafter in the light of torch he saw 5-6 persons including the appellant herein and saw that they were kidnapping the victim. This witness also could not disclose the day and time of occurrence.

10. P.W. 3 namely Kavita Kumari is the victim girl and she has stated in her evidence that the occurrence relates to three years back at about 4-5 A.M. in the morning when she had come outside the house along with her mother for the purposes of going to the toilet whereupon the appellant had put his hand on her mouth and when her mother tried to raise alarm the appellant had shown pistol and told her to keep quite and then the said people put her in a car and had taken her to Gaziabad in U.P. where she was beaten by the accused persons and the appellant told her to marry him but she resisted the same by saying that her marriage had already been fixed. It has been further stated that she was kept at Gaziabad for 8 days and the appellant also had sexual intercourse with her. Subsequently, the mother of the appellant came to Patna and called both of them i.e. the appellant herein and the victim girl to Patna and when they reached Patna, they were caught near the Lord Mahavir Mandir. This witness has further stated that the Police had then brought her to the police station. It has also been stated that her house and the house of the appellant are at a distance of about 4-5 houses.



This witness has also stated that at the time when she had come outside her house with her mother in the morning for going to the toilet, it was a bit dark and the face could not be seen. In paragraph no. 27 of her cross-examination, P.W. 3 has accepted that she had given different statement before the Police and the Court. In paragraph no. 32, P.W. 3 has denied the fact that she had love affair with the appellant herein from before.

11. P.W. 4 i.e. Suraj Kumar is the brother of the victim girl and he has stated that the occurrence dates back to three years and it was about 4:00 A.M. in the morning and when her sister and mother had come out of the house for going to the toilet, the accused persons including the appellant herein had forcibly abducted his sister and when he came down stairs, he found that his mother was crying and was saying that his sister has been kidnapped by the appellant and other accused persons. P.W. 4 has further stated that her sister was found at Patna after 8 days and the police had recovered her from a hotel at Patna where she was staying with the appellant after solemnizing marriage with the said appellant. In paragraph no. 4 of his cross-examination P.W. 4 had admitted that the love affair between his sister and the appellant was going on since two years, hence his sister namely Kavita had been sent to the matrimonial house of his elder sister since her marriage had been fixed and when the victim girl came back, she had fled away in the morning.

12. P.W. 5 namely Pankaj Kumar has stated that on 01.03.2007 when the victim girl along with her mother had come out of their house for going to the toilet at about 4:00 A.M. in the morning, the appellant herein and the other accused persons took away the victim girl. P.W. 5 has further stated that he is the cousin brother of the victim girl. P.W. 5 has also stated that he and his sister belongs to Rajput caste while the appellant belongs to Gold Smith caste.



13. P.W. 8 is the Doctor namely Smt. Krishna Devi Singh and on 15th March, 2007 she was posted as lady Medical Officer at Sadar Hospital, Bhagan Bigha and on that date she had examined the victim girl namely Kavita Kumari and had found that there were no injuries on the external part of the body of the girl. It was also found by the said doctor that the hymen was old, torn and the girl was used to sexual intercourse.

14. P.W. 9 is the then Judicial Magistrate, 1st Class who had recorded the statement of the victim girl under Section 164 Cr.P.C. on 16.03.2007, which he has recognized and has been marked as Exhibit-4. In cross-examination, P.W. 9 has stated that the victim Kavita Kumari had made her statement before him voluntarily and the victim girl had told him that she had fled away on her own free will since her mother wanted to marry her against her wishes and she had gone with the appellant with whom she was having a love affair as well as the statement given to the Police by her mother was false and nobody had abducted her.

15. After completion of the prosecution evidence the appellant herein was examined under section 313 of the Code of Criminal Procedure and he has denied to have committed the alleged occurrence.

16. Learned Advocate for the appellant has argued that the judgment of conviction is liable to be set aside on the ground that the victim girl, in her statement under Section 164 Cr.P.C., has stated that she had fled from her house on her own free will and had voluntarily married the appellant herein. It is further submitted that the love affair between the victim girl and the appellant herein is admitted and only because of social pressure put on the victim girl, she has changed her statement during the course of the trial and her evidence, which has been adduced during the course of the trial as P.W. 4, is contradictory to the



statement made by her under Section 164 Cr.P.C., which has been proved during the course of trial by P.W.9 i.e. the then Judicial Magistrate- 1st Class, Bihar Sharif. It is submitted that even otherwise there is lot of contradictions in the evidence adduced by the prosecution.

17. Shri Ashok Kumar, the learned Additional Public Prosecutor, appearing for the State, has submitted that there is ample evidence on record to sustain the conviction of the appellants herein.

18. I have examined the materials on record and it is apparent from the statement of the victim girl made under section 164 Cr.P.C. before the learned Judicial Magistrate- 1st Class, Nalanda, who has also proved the said statement made under Section 164 Cr.P.C., that the victim girl had on her own free will fled away from her house on account of pressure being put on her by her mother for marrying elsewhere and thereafter she had voluntarily married with the appellant herein and wanted to stay with him as husband and wife. In fact the age of the victim girl has been stated to be 20 years in the form of heading of deposition in which her statement under section 164 Cr.P.C. was recorded by the learned Judicial Magistrate- 1st Class, Nalanda. In fact P.W. 7 i.e. the Investigating Officer of this case has also admitted that the victim girl had, in her statement made before him, stated that she had fled from her house on her own free will, the age of the victim girl is 20 years and she had gone to Gaziabad by Shramjivi train where she had voluntarily married the appellant herein. The clinching evidence in the present case is that of the own brother of the victim girl i.e. P.W. 4 namely Suraj Kumar who has stated that her sister was having love affair with the appellant herein and she had fled from the house on her own after returning back from the matrimonial home of her elder sister where she had been sent since her marriage had been fixed with someone else. Moreover, there is also discrepancy



in the statement of various witnesses to the effect that while the mother of the victim girl has stated that the victim girl had come to the police station , on her own along with the appellant herein, the brother of the victim girl has stated that her sister and the appellant herein were recovered by the Police from a hotel at Patna. The witnesses have also referred to the fact that the victim girl belongs to a forward caste i.e. Rajput caste whereas the boy belongs to backward caste of Goldsmith.

19. Upon consideration of the entire evidence, it is apparent that the entire occurrence is doubtful inasmuch as the own brother of the victim girl i.e. P.W. 4 has admitted that her sister was having a love affair with the appellant and had fled from the house on her own. Apart from the evidence of P.W. 4 the victim girl herself has admitted in her statement made under Section 164 Cr.P.C., which has been proved by P.W. 9 i.e. the Judicial Magistrate-1st Class to have been made voluntarily before him, that she was making the statement without any pressure, she was having a love affair with the appellant herein and had fled with the appellant on her own free will as well as had married him and wanted to stay with him. In fact the Investigating Officer i.e. P.W. 7 has also admitted in his cross-examination that the victim girl had stated in her statement made before him that she was having a love affair with the appellant and had voluntarily fled away with him and performed marriage as well as was staying with him on her own free will. The entire evidence on record makes the incident of kidnapping doubtful and suggests that the victim girl was having love affair with the appellant and they had voluntarily fled away and had solemnized marriage.

20. After going through the materials on record and the evidences, I am of the opinion the prosecution has not proved the case beyond all reasonable doubt and as such the appellant of the present criminal appeal deserves to be given the



benefit of doubt. Accordingly, the judgment of conviction dated 23.11.2012 and sentence dated 27.11.2012 passed in Sessions Trial No. 148 of 2009 is hereby set aside. The appellant herein was granted bail by order dated 04.01.2013 while the appeal was admitted. Considering the fact that the appellant has been acquitted, he is hereby discharged from the liability of bail bonds.

21. The appeal stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
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