

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.577 of 2015

Arising Out of PS.Case No. -167 Year- 2011 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Moti Singh Son of Sudarshan Singh,
2. Sudarshan Singh, Son of Late Mahendra Singh, Both resident of Village -
Tekanpura, P.s. - naokothi, District - Begusarai. Appellant/s
Versus
1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-06-2018

Appellants, Moti Singh and Sudarshan Singh have been found guilty for an offence punishable under Section 366 IPC and each one has been sentenced to undergo RI for 5 years as well as to pay fine of Rs. 5000/- and in default thereof, to undergo SI for 2 months additionally and further appellant, Moti Singh has independently been found guilty for an offence punishable under Section 376 IPC and sentenced to undergo RI for 7 years as well as to pay fine of Rs. 5000/-, in default thereof, to undergo SI for 2 months additionally with a further direction to run the sentences concurrently vide judgment of conviction dated 19.08.2015 and order of sentence dated 26.08.2015 passed by Additional Sessions Judge-1st, Begusarai in Sessions Trial No. 53/2014.

2. PW-1, Vijay Rai filed a written report on 30.04.2011 divulging the fact that on 25.04.2011, he along with his wife proceeded to Katyayani Asthan to worship leaving his minor



daughter, victim-PW 4, (name withheld) aged about 15 years, alone. His sons had gone to market. During intermediary period, Sudarshan Singh and his sons, Hira Singh and Moti Singh came over an Ambassador Car and disclosed to his daughter that her parents met with an accident in a way to Khagaria and so, to rush immediately carrying money and other items whereupon, his daughter took out Rs. 90,000/- and ornaments weighing 5 Bhars and accompanied them over the Ambassador Car. It has also been disclosed that money was sale proceed of a land. When he returned back on 26.04.2011 along with his wife, he found his daughter missing. He had also found cash, ornaments missing. Then they began to search out and during course thereof, they were told by their neighbours that Moti Singh took her away over a car. Then, he began to make hectic search and during course thereof, he came to know that Moti Singh with the help of his brother and father took her away with ulterior motive as well as to digest the cash, ornaments.

3. On the basis of the aforesaid written report, Begusarai Town PS Case No. 167/2011 was registered followed with an investigation during course of which, victim was traced out, accused persons were apprehended and then, completing the investigation, charge-sheet was submitted facilitating the trial meeting with the ultimate result, subject matter of the instant appeal. It is also evident from the lower court records that after submission of charge-



sheet trial of Hira Singh, on account of non appearance was bifurcated vide order dated 21.12.2013.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that the victim, who happens to be major, was in love with Hira Singh with whom she married but subsequently, when she found him to be an idiot, pressurized upon other family members to have her settlement with Moti Singh which was refused and on account thereof, this false case has been instituted at the instance of the victim by her father. Furthermore, apart from ocular evidence, documentary evidence has also been made exhibit in support thereof.

5. In order to substantiate its case, prosecution had examined altogether 10 PWs out of whom PW-1, Vijay Roy, PW-2, Shivjee Sahni, PW-3, Anmola Devi, PW-4, Victim, PW-5, Dinesh Kumar Sinha, PW-6, Ajay Kumar Ajnabi, PW-7, Birendra Kumar, PW-8, Dr. Arun Kumar, PW-9, Dr. Ram Pravesh Prasad and PW-10, Dr. Kamini Roy, as well as had also exhibited signature of informant over written report as Ext-1, signature of victim over statement recorded under Section 164 CrPC as Ext-2, Formal FIR as Ext-3, Medical Report, Ext-4. In likewise manner, 3 DWs have been examined, namely, DW-1, Kaushlendra Rai, DW-2, Ram Babu Singh and DW-3, Ram Sagar Singh along with Ext-A, final form relating to



Naokothi PS Case No. 117/2011, Ext-B, protest petition relating to Naokothi PS Case No. 69/2014, Ext-C, FIR of Naokothi PS Case No. 117/2011, Ext-D, Endorsement over FIR of Naokothi PS Case No. 117/11.

6. While assailing judgment of conviction and sentence, learned counsel for the appellants has submitted that from the materials available on the record, it is crystal clear that (1) victim was major, (2) she was a consenting party, (3) she married with Hira Singh, (4) finding him to an idiot pressurized upon other family members to have settlement with Moti Singh. The aforesaid eventualities are found from the conduct of the witnesses as father/informant (PW 1) had pecked over the initial prosecution version and further, supported the plea made on behalf of defence which is found going to root of the case adversely affecting upon the credibility of the PW-3, mother and PW-4, the victim. Furthermore, from the evidence of the victim, it is evident that her conduct, being a silent spectator availing the company of the accused persons without any protest or grievance or any kind of activity exposing her delineation with the accused, being major, did speak a lot whereupon, the finding of the learned lower court is not at all found maintainable. Apart from this, PW-10 had found the hymen old rupture, that means to say, very much indulgence of sexual activity at an earlier occasion is another circumstance which rules out the allegation as advanced at



the end of the victim. From the evidence of PWs-8 and 9 it is manifest that the victim happens to be major on the alleged date and time of occurrence. Furthermore, It has also been submitted that PW-7, Investigating Officer had recovered the victim from the house of the appellants and at that very time, the activity of the victim was not at all perceived in a way to corroborate that she was illegally confined and she had taken a fresh breath after having been recovered. Moreover, even during course of investigation, it has been collected by the Investigating Officer that the victim was in love with Hira Singh.

7. On the other hand, learned APP supported the finding recorded by the learned lower court and submitted that in a rape case, the evidence of victim has got primacy and unless and until there happens to be cogent reason visualizing therefrom to discredit the version, the same has to be accepted. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be affirmed.

8. In order to appreciate the evidence having been adduced on behalf of prosecution, the conduct of the witnesses is also to be perceived. PW-2 has not supported the case of the prosecution whereupon, he was declared hostile. Even thereafter, prosecution has not been able to extract any material gain in its favour. PW-5 is the part Investigating Officer who had simply prayed before the learned



lower court for issuance of proclamation against accused Moti Singh. In likewise manner, PW-6 also happens to be part Investigating Officer who had simply submitted charge-sheet against the accused.

9. PW-1 is the informant/father of the victim. He had deposed that on the alleged date and time of occurrence he along with his wife Anmola Devi had gone to Katyayani Asthan to perform rituals leaving behind his daughter (name withheld) aged about 18 years alone at the house. When he returned back at about 10.30 AM/(notes as PM), he found his daughter absent and for that, he made hectic search and during course thereof, he came to know that three persons have taken away his daughter over an Ambassador Car on the pretext that her parents have met with an accident at Khagaria and to facilitate proper treatment, she has to carry cash, ornaments. He found Rs. 90,000/- as well as gold ornaments weighing 5 Bhars missing. The aforesaid information was given by Hira Singh. Then had stated that after 15 days, he came to know that Hira Singh is residing with the victim at Dhanbad wherefrom, Hira Singh had telephonically conversed with him and said that you have nothing to worry, they are at Dhanbad over which, he instructed Hira Singh to come along with the victim and he arrived along with the victim as per his instruction. Then thereafter, he had informed the police. Munshi (literate constable of the police station) scribed the application over his dictation whereupon, he had put his signature (exhibited). Then



thereafter, he was declared hostile by the prosecution and during course thereof, relevant portion of the written report was confronted to him which he admitted and then had denied the suggestion that coming in collusion with the accused, given out relevant crucial allegation having been attributed against the accused, so levelled at his end. During cross-examination at para-5, he had stated that they have left the victim alone at his house. In para-6, he had further stated that none had disclosed with regard to presence of the accused persons as well as number of the car. In para-7, he had stated that in the written report he had mentioned the names of other accused, apart from Hira Singh on mere suspicion. In para-8, he had stated that Hira Singh had not come to his place along with the victim rather he had gone to his village-Tekanpura wherefrom police recovered the victim. In para-9, he had further disclosed name of only Hira Singh to be her kidnapper. In para-10, he had stated that the victim had handed over cash and ornaments to Hira Singh. In para-11, he had stated that he had identified the accused being a relative.

10. PW-3 is the wife of PW-1 as well as mother of the victim. During her examination-in-chief, she had stated that she along with her husband had gone to Katyayani Asthan for performing worship on the alleged date and time of occurrence leaving behind the victim at her house. On their return, they have not seen the victim whereupon, began to search out and during course thereof, the persons



of the surroundings have disclosed that Moti Singh, Sudarshan Singh and Hira Singh came over an Ambassador Car and took away the victim. They also took away Rs. 90,000/- as well as ornaments weighing 5 Bhars. They took away the victim on the pretext that her parents have met with an accident at Khagaria. Then thereafter, they made hectic search. About 10-15 days thereafter, she got an information that the victim is being kept at the place of *Phua* of Moti Singh. Then thereafter, Moti Singh shifted her to Tekanpura. As case was instituted, on account thereof, the police had gone to the place of accused at village, Tekanpura and recovered the victim from the house of Sudarshan Singh. Identified the accused. She had further disclosed that at the time of kidnapping the age of the victim was 16-17 years. During cross-examination at para-6, 7, 8 she had stated that her husband happens to be four brothers. All are separate and are residing independently. In para-9, she had stated that they have gone to Katyayani Asthan leaving the victim alone as no other members are in the family. In para-12, she had stated that her daughter left study about 6 years ago, after passing Class-VII. In para-14, she had disclosed that she is not remembering the names of those persons who have had disclosed regarding the occurrence. In para-15-16, she had detailed with regard to presence of Rs. 90,000/- cash as well as ornaments. In para-17, she had stated that she is unable to disclose mobile number by which the victim had talked with her. In para-18,



she had stated that she received another call regarding presence of the victim at Tekanpura. In para-20, she had stated that she is unable to disclose with regard to habitat of Hira Singh. In para-23, she had stated that after recovery of the victim, the victim has come to her and then disclosed that why marriage has been performed with an insane person. She has further disclosed that Moti Singh forcibly got her married with Hira Singh. Moti happens to be brother of Hira Singh. In para-24, she had denied that her daughter had tried to negotiate with Moti even after solemnization of marriage with Hira. In para-26, she had stated that her daughter has not gone to her Sasural after her recovery. At para-27, she had stated that at the time of occurrence, her daughter was aged about 16-17 years. Then had denied suggestion that it is wrong so say that the victim was aged about 18-19 years and was a major. She had also denied the suggestion that when they came to know that Hira Singh was an idiot, they tried to get marriage of the victim with Moti Singh and as the accused persons refused, on account thereof, this false case has been registered.

11. PW-4 is the victim. She had deposed that on the alleged date and time of occurrence, she was alone at her house as her parents had gone to Katyayani Asthan. At that very time, Moti Singh, Sudarshan Singh and Hira Singh came inside her house. They came over an ambassador car. Out of them, Moti Singh disclosed that her parents have met with an accident at Khagaria so, she should leave the



place at once along with cash, ornament whichever may be. Accordingly, she collected Rs. 90,000/-, gold ornaments weighing 5 Bhars (detailed) and accompanied them over ambassador car. They took her Khagaria where confined in a room. Then thereafter, Sudarshan and Hira left the place keeping Moti Singh along with her. During course of confinement, Moti committed rape so many times. On the following day, Sudarshan and Hira again appeared and then took her along with Moti to Teghra Vidyapeeth Mandir where in spite of her protest, got her marriage performed with Hira. Then thereafter, all of them took her to Dhanbad, place of *Phua* of Moti where she was kept for 12-14 days. Moti and Hira both forcibly committed rape. She tried to escape but *Phua*, *Phupha* and Moti Singh were so vigilant that her attempts went futile. Then thereafter, they came to know about institution of a case at the end of her parents whereupon Moti and Hira took her to their house Tekanpura where she was kept for four days. She was ruthlessly treated at that very place. Once upon a time, Moti tried to set her on fire. Moti also raped her during stay at Tekanpura. After four days, the police rescued her. She was taken to the place of Superintendent of Police and then to police station. On the following day, she was taken to court where her statement was recorded (exhibited). She was medically examined and then, she was handed over to her parents. Identified the accused. During cross-examination at para-7, she had stated that she read up to Class-V. In



2006, she had passed Class-V. At that very time, she was approximately aged about 13-14 years. In para-8, she had stated that accused persons are residents of different village. They were not on visiting terms. For the first time, she came to know about their names after the occurrence. In para-9, she had stated that for the first time, they came at their house on the date of occurrence and putting belief upon their words, she joined them. At that very time, she was alone. Then at para-11, 12, 13 there happens to be cross-examination relating to availability of the cash, ornaments. In para-14, she had stated that at the time of departure, she had not talked with any of the neighbours. In para-16, 17, 18, 19, there happens to be cross-examination over location of her house, road connecting her house. In para-20, she had stated that her elder sister, Rakhi Kumari is married with one Bittu Singh of Village- Mathurapur. She had further stated that accused persons are not related with her brother-in-law. In para-23, she had denied the suggestion that her brother-in-law, Bittu happens to be cousin brother of Hira. At para-24, she had denied the suggestion that during course of visit to the place of her brother-in-law, she got intimated with Hira Singh. In para-25, she denied the suggestion that she had fallen in love with Hira. In para-26, she had denied the suggestion that in the aforesaid background she married with Hira at Ashok Dham. In para-27, she had admitted that it is true that Sudarshan, Moti and Hira forcibly took her to Vidyapeeth and then



got herself married with Hira against her will. In para-27, she had denied the suggestion that it is not a fact that after forcibly marrying her, Hira took her to his house where, his father was not inclined to keep her but at the intervention of the people of the locality, he permitted. In para-29, she had further stated that Hira happens to be an idiot and further is stammering. Then had denied the suggestion that seeing the status of Hira, her parents wanted to marry her with Moti. Then at para-31, 32, 33, 34 she had stated that she had gone to Khagaria by Ambassador Car. Before that she had not gone to Khagaria. In Khagaria, she was kept for two days. In para-35, she had disclosed that after forcibly committing rape upon her there was bleeding but, it had not stained her clothe. In para-36, she had stated that in the same clothe she was taken to Vidyapeeth and then Dhanbad and then *Phua* of Moti provided clothe to her. In para-38, she had stated that Hira had raped her for two days while Moti had raped for 7-8 days. In para-41, she had stated that she came at Tekanpura from Dhanbad. Mother of Moti forced her to wear Sari. In para-42, she had stated that after arrival of police at Tekanpura, she was taken away by the police. She had stated that her medical examination was conducted after 5-6 days of sexual intercourse by the accused persons. Then had stated that she had got no information with regard to medical examination. In para-47, she had disclosed that police had recovered her on 01.05.2011. Then had denied the suggestion that before the



police, she had not stated with regard to commission of rape. Then had denied the suggestion that no occurrence as alleged had taken place. She had denied the suggestion that no one had indulged in physical relationship with her. Then had denied the suggestion that it is not a fact that she was in love with Hira and she married out of her sweet will. Because of the fact that Hira was stammering and was an idiot, on account thereof, her parents tried to marry her with Moti Singh and for that, they pressurized and as they declined, on account thereof, this case has been instituted.

12. PW-7 is the main Investigating Officer who had deposed that after registration of the case, he took up investigation, recorded further statement of the informant, inspected the place of occurrence which happens to be house of the informant and detailed the same. He recorded the statement of mother of the victim and others. Recovered the victim from the house of the accused. Recorded her statement, got her medically examined. Recorded statement of other witnesses and then thereafter, as he was transferred, he handed over the investigation to another Investigating Officer. During cross-examination, at para-13, he had stated that in the written report there was specific discloser regarding age of the victim to be 15 years but he had no demanded any document in support thereof. In para-14, he had stated that he had not tried to locate the ambassador car. He had not procured cash memo of the ornaments. He had not investigated



over Rs. 90,000/-. Then had stated that he had gone to visit place of occurrence on 01.05.2011 wherefrom the victim was kidnapped. Then at para-26, 27, 28 there happens to be examination with regard to recording of the facts incorporated in the relevant paragraph of the case diary. Then had denied the suggestion that his investigation happens to be farce.

13. PW-8 is the doctor who had conducted X-ray of the victim and further he had also disclosed the findings of the medical board with regard to age of the victim in between 18-19 years. PW-9 is another doctor, member of the board who also affirmed the findings of the medical board regarding age of the victim to be 18-19 years.

14. PW-10 is the Gynaecologist who during course of examination of the victim, apart for other, had found the hymen old ruptured. However, opined that no evidence of rape is found.

15. At the defence side, there happens to be Ext-A, Final form relating to Naokothi PS Case No. 117/2011 having been at the end of Krishna Arjun Singh @ Jhulan Singh, Ext-B happens to be protest petition relating to Naokothi PS Case No. 69/2014 wherein informant happens to be accused Sudarshan Singh and the date of occurrence relating thereto happens to be 29.02.2012 and for that, Complaint Case No. 636C/2013 was filed in the year 2013 whereunder the members of the prosecution party including that of victim have been shown as accused at Sl No. 6, 7 and 8, Ext-C



happens to be an FIR of Naokothi PS Case No. 117/2011 instituted at the end of Krishna Arjun Singh wherein date of occurrence has been shown as 10.11.11. wherein it has been alleged that Amardarshan Singh @ Hira Singh, one of the accused of this case had kidnapped his daughter, Munni Kumari aged about 11 years. DWs-1 and 2 are formal in nature while DW-3 has been examined over the inter se relationship in between Bittu Singh and Hira Singh and the prevailing love affair in between Hira and the victim.

16. From the evidence having produced at the end of the prosecution, it is apparent that father of the victim, PW-1 had leaned in favour of accused and further encircled the absconding accused Hira Singh exonerating the present accused and on that very score, he had stated that these persons have been named on mere suspicion. PW-3, the mother did not opt to support the evidence of PW-1 and on account thereof, she stood adverse, and further, reiterated the allegation whatsoever she gathered from the victim after her recovery. During cross-examination, it is apparent that on that very score, defence could not be able to shake her testimony. PW-4 is the victim herself and she narrated the event. She narrated as to how she was treated like sex slave in spite of forcibly married with Hira Singh by Hira and Moti Singh. Furthermore, defence had not dare to test this witness on the score of horrifying situation which this victim faced at Khagaria, Dhanbad and at Tekanpura. There happens to be no cross-



examination at the end of the defence, even considering that up to Khagaria, she was taken in deceptive manner and further, whether she made any effort to raise alarm or to have herself rescued by attracting the passersby by her gesture or posture and that being so, it could not be said that her activity suggests that she was a consenting party even in the background of the fact that more or less, her status being major is found properly appreciable. The only even whatever been perceived against her is joining with the accused whom she met for the first time, but the manner whereunder accused presented themselves giving no time to analyze the situation, being semi literate girl, is another circumstance to keep in mind.

17. Furthermore, finding of the doctor (PW 10), Gynaecologist, that her hymen was old ruptured is also suggestive of the fact that in past, she was subjected to sexual intercourse and further there happens to be no cross-examination at the end of the defence that rupture of hymen could be caused by other processes.

18. After scrutinizing the evidence, it is apparent that though at an initial stage presence of Sudarshan Singh has also been shown but subsequently, his absence speaks a lot and on account thereof, doubt has arisen over his active involvement during course of aforesaid occurrence whereupon, the conviction and sentence recorded against him by the learned lower court is set aside. This appeal to the extent of appellant, Sudarshan Singh is allowed. As he is



on bail he is discharged from the liability of the bail bond.

19. So far appellant Moti Singh is concerned, prosecution has succeeded in proving its case beyond the reasonable doubt, that being so, the instant appeal to his extent is found meritless, consequent thereupon, is dismissed.

20. Appellant, Moti Singh is on bail, his bail bond is cancelled directing him to surrender before the learned lower court within a fortnight to serve out the remaining part of sentence failing which the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.06.2018
Transmission Date	26.06.2018

