

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.12 of 2018

Arising Out of PS.Case No. -130 Year- 2016 Thana -MUSAHRI District- MUZAFFARPUR

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1. Anmol Kumar, S/o Sushil Kumar @ Sushil Ray, Resident of Village- Dargha,
P.S.- Sakara, District- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiva Shankar Sharma,
Mr. Arun Kumar Sinha

For the Respondent/s : Mr. Shyed Ashfaq Ahmad

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 09-05-2018

Heard the learned counsel for the appellant and the State.

2. The juvenile/appellant, viz. Anmol Kumar has been convicted by the Child Court vide judgment dated 22.11.2017 and 28.11.2017 passed in Trial No. 7 of 2017, arising out of Mushari P.S. Case No. 130 of 2016, whereby the juvenile/appellant has been convicted under Sections 363, 376 of the Indian Penal Code and Section 4 of the POCSO Act, 2012 and by the order dated 28.11.2017, he has been sentenced to undergo R.I. for three years, to pay a fine of Rs. 2,000/- and in default of payment of fine, to further suffer imprisonment for two months for the offence under 363 of the Indian Penal Code; and R.I. for seven years, to pay a fine of Rs. 3,000/- and in default of payment of fine, to further suffer imprisonment for three months for the



offence under Section 4 of the POCSO Act, 2012. No separate sentence has been awarded under Section 376 of the Indian Penal Code, in view of the provisions contained in Section 42 of the POCSO Act, 2012. By the aforesaid judgment and order, it has been directed that the victim girl be compensated with Rs. 50,000/- by the Legal Services Authority, Muzaffarpur. A copy of the judgment has also been directed to be served free of cost to the juvenile/appellant. The Superintendent of the remand home has further been directed to ensure child friendly atmosphere in the remand home and the Probation Officer has been directed to supervise and look after the appellant during the period of his stay in the remand home. It has further been directed that after attaining the age of 22 years, the juvenile/appellant shall be transferred to jail.

3. The juvenile/appellant is alleged to have abducted the victim (minor girl) and taken her to a place where she was subjected to sexual intercourse.

4. The case of the prosecution rests on the F.I.R. lodged by the victim girl. She has alleged in the F.I.R. that she was always being stalked by the appellant whenever she came out of her house to attend her school. On 27.09.2016, when she had come out of her house to go to her school and took an auto-rickshaw, the appellant forcibly stopped the auto-rickshaw and sat inside the vehicle. Thereafter, he talked to the driver of the auto-rickshaw and threatened her to keep sitting tight on her seat. The driver of the auto-rickshaw kept on driving



the vehicle. He was prevented from stopping the vehicle near the school. Thereafter, the vehicle was taken to an unknown destination. The victim girl has alleged that seeing the circumstances in which she was abducted, she became unconscious. When she regained her consciousness, she found herself inside a room where an old woman was sitting. She also asked her to remain quiet. Later, the old woman was made to go out of the room whereafter the appellant subjected her to sexual intercourse. On 29.09.2016 at about 4 O'clock in the morning, the appellant took the victim girl to Narauli Pump House in an auto and left her on the road. The house of the maternal grandfather of the victim was known to her which is situated near the Narauli Petrol Pump. She claims to have gone to her maternal grandfather and narrated about the occurrence to him. The maternal grandfather of the victim girl thereafter informed about the occurrence to her father. Thereafter, the case was lodged on 01.10.2016.

5. On the basis of the aforesaid written report, a case vide Mushari P.S. Case No. 130/2016 dated 01.10.2016 was instituted for the offences under Sections 363, 376 of the Indian Penal Code and Section 4 of the POCSO Act, 2012.

6. The police, after investigation, submitted charge-sheet. Since the appellant was assessed to be more than 16 years of age, his case was transferred to the Child Court in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for his trial.

7. The trial court, after examining six witnesses on



behalf of the prosecution and two witnesses on behalf of defence, convicted and sentenced the appellant as aforesaid.

8. Mr. Shiv Shankar Sharma, the learned counsel for the appellant has assailed the judgment and order of conviction and sentence on the ground that but for the victim, who has been examined as P.W. 4, there is no eye-witness to the occurrence and that the story narrated by P.W. 4 is not worth believable. He has further submitted that the occurrence of abduction is said to have taken place on a highway, during day time and it does not appear to be probable that the victim would not make any hue and cry or that nobody would not come to her rescue. That apart, it has been argued that the driver of the auto-rickshaw also surprisingly did not come to the rescue of P.W. 4. The investigation of this case, it has been submitted, is absolutely shoddy and cannot be relied upon for the purposes of convicting the appellant. No effort was made by the investigating officer to find out as to where the victim was kept in confinement after abduction. Nobody from the place of occurrence has been brought to the witness box to testify that the victim was kept in confinement for two days. The delay in lodging the F.I.R. is also stated to be one of the grounds for doubting the genuineness of the prosecution version. Apart from all this, it has been argued that two witnesses offered on behalf of the defence have categorically stated before the trial court that they were witnesses to the insistence of the maternal grandfather and father of the victim (P.W. 4) for marrying the



appellant with the victim girl. Only on refusal of the father of the appellant to oblige the maternal grandfather and father of the victim girl, that the present case has been lodged.

9. In order to appreciate the contentions of the appellant, it will be necessary to refer to the evidence of the witnesses.

10. Manoj Rai, who is the father of the victim, has been examined as P.W. 1. He has deposed that his daughter, on the date of the occurrence, was 14 years of age. He has supported the prosecution version and has narrated the story which was told to him by his daughter. He has stated that his daughter clearly told him that the appellant had subjected her to sexual intercourse. His daughter was put to medical examination and thereafter, the case was filed. Similar statement has been made by Ram Karan Rai, who is the grandfather of the victim, Manju Devi, who is the mother of the victim and Bindeshwar Rai, who is the maternal grandfather of the victim, who have been examined as P.Ws. 2, 3 and 5 respectively. All of them have testified that the victim was abducted by the appellant and thereafter was taken to some unknown place where she was kept in confinement for about two days. During the period of her confinement, she was subjected to sexual intercourse. All the aforesaid witnesses learnt about the occurrence only through the mouth of P.W. 4.

11. The victim (P.W. 4) has, in her examination-in-chief, reiterated her initial version before the trial court. She has deposed that



on the day of the occurrence, at about 9:30 AM, while she was going to School in an auto-rickshaw, the appellant arrived and sat in the same auto-rickshaw. After going to some distance, the appellant is said to have whispered something in the ears of the auto-rickshaw driver. Later, she was made to smell something which made her unconscious. She did not know where was she being taken to. On regaining her consciousness, she found herself in a room. After some time of her regaining consciousness, an old woman came inside the room and gave her water to drink. Thereafter, the appellant arrived in the room who forced her into sexual act. She tried to raise protest but was gagged by the appellant. After about two days, P.W. 4 was brought out of the room and was taken to a petrol pump and was left there, from where P.W. 4 claims to have gone to her maternal grandfather. She has stated that she filed this case in the police station where she was accompanied by her mother. She was also subjected to medical examination. About 10-15 days prior to the occurrence, the appellant had insisted upon her to marry him. He was also pestering her for talking to him on mobile telephone. She had complained about the aforesaid act of the appellant to her elders. When a complaint was made to the guardian of the appellant, they did not offer any help and only threatened them of dire consequences, in case such the matter was reported to the authorities. From the deposition of the aforesaid witnesses, it becomes very clear that the stalking continued for several days and on the day of the occurrence, the victim was abducted.



12. The learned counsel for the appellant, however, has submitted that there is huge difference in the tenor of the statement made by her during trial and in the F.I.R. There is a different version in the statement given by the victim in her 164 statement.

13. Though one can find some difference in the aforesaid three statements of the victim but the filtrate of the matter is that under duress, she was abducted and was put to sexual intercourse without her will/consent. There is no reason to disbelieve the deposition of P.W. 4.

14. While challenging the judgment and order of conviction, the learned advocate appearing for the appellant has also submitted that P.W. 4 cannot be said to be wholly reliable as her past conduct in not complaining against the appellant only reflects that there was some kind of liaison/association between the appellant and the victim and only because the elders of the house were not agreeable to this kind of a relationship, the present case was lodged.

15. With reference to the evidence of P.W. 6, the Investigating Officer, the learned advocate appearing for the appellant has submitted that he has not investigated the case properly. He has only stated that the victim was abducted from a particular crossing. No effort was made by the Investigating Officer to go to the place where the victim was kept in confinement or to interrogate the old lady who is said to have offered water to the victim in the room where she was confined. No body from the neighbourhood also has been examined to corroborate



the version of P.W. 4.

16. In that view of the matter, it has been argued that but for the discrepant statement of the victim, there is no other material to corroborate the allegation against the appellant. Thus, the conviction and sentence of the appellant is stated to be unwarranted.

17. The investigation of the case, no doubt, is flawed but that cannot be the sole basis for disbelieving the victim who has been consistent in her examination-in-chief that she was abducted while on her way to school and was kept in a desolate place where she was sexually assaulted. The age of the victim girl was assessed between 16 to 17 years. The aforesaid assessment of the age by the Medical Board has been testified by Dr. Mukul Kumar, who has been examined as P.W. 7. The aforesaid P.W. 7 was one of the members of the medical team which had assessed the age of the victim.

18. Dr. Reeta Renu Chaudhary (P.W. 8) had examined the victim. Though she did not find any mark of injury of violence on the private parts of the victim girl but found the hymen of the victim ruptured. The pathological examination of the vaginal fluid also did not show any signs of spermatozoa. The victim was examined on 02.10.2016, i.e. after a couple of days of the victim having been subjected to sexual intercourse. There is no evidence whatsoever that after the aforesaid sexual act, the victim had not washed her body or had not taken bath. No spermatozoa is expected to be found in the vaginal



swab after some days of the sexual act. This also does not discredit the prosecution version in totality.

19. In the aforesaid context, it would also be relevant to look at the evidence of defence witnesses. The two defence witnesses have only stated that they were witness to the talk of marriage between the appellant and the victim girl. The father and the maternal grandfather of the victim were insisting upon the father of the appellant to have the marriage between the appellant and the victim solemnized. This was outrightly refused by the father of the appellant. From their evidence, it does not appear to be clear as to when was this insistence being made. If the insistence would have been made prior to the occurrence, it could be taken into account that merely because of the refusal of marrying the victim with the appellant, that this false case has been lodged. If such offer was being made after the occurrence, then it only confirms the prosecution version that the victim was abducted by the appellant and was kept in confinement where she was subjected to sexual act. It is quite in consonance with the prosecution version that the delay in lodging the case was only because the family members of the victim were being assured that the victim would be married to the appellant. In fact, the prosecution side was prevented from filing the case for some time as talks of settlement were going on. Even if this aspect is found to be correct, it does not, in any manner, dilute the correctness of the version of P.W. 4.



20. For the reasons aforesaid, the conviction and sentence of the appellant cannot be said to be flawed or unsustainable in the eyes of law. As such, the judgment and order of conviction is sustained and affirmed.

21. However, this Court is of the view that the direction of the trial court for sending the appellant to jail after his completing 21 years of age is incorrect.

22. Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:

“20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.

(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children’s Court shall provide for a follow up by the probation officer of the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children’s Court may-

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of



stay;

(ii) decide that the child shall complete the remainder of his term in a jail;

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.”

23. The provisions of the aforesaid Section clearly lay down that if a child in conflict with law attains the age of 21 years and is about to complete the term of stay, the Children’s Court shall provide for a follow-up by the Probation Officer or the District Child Protection Unit or a social worker or the Court itself to evaluate as to whether the child has undergone reformative changes. If it is found that there has been a reformation and the child can contribute to the society, it would be open for the Child Court to decide whether it would be expedient to release the child on such conditions as it deems fit which may include appointment of a monitoring authority for the remainder of the prescribed term of stay or decide that the child shall complete the remainder of his term in a jail. Such a situation would arise only on assessing the development/reformation of the child/appellant and no order could be passed by the trial court straightway to send the appellant to jail after completing 21 years of age.

24. In that view of the matter, the aforesaid direction of the trial court of sending the appellant to jail is set aside. After the child



completes 21 years and term of sentence still remains, the trial court/the Child Court shall adopt the procedure delineated in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and shall pass orders accordingly at that stage.

25. With the aforesaid modification in the sentence, the appeal is dismissed.

(Ashutosh Kumar, J.)

Rakhi

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