

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.381 of 2016

Arising Out of PS. Case No.-129 Year-2012 Thana- KASBA District- Purnia

Nitya Nand Mandal Son of Rajdeo Mandal, Resident of village- Renugaon
Renu Gram Orahi, Police Station- Simraha, District- Araria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 258 of 2016

Arising Out of PS. Case No.-129 Year-2012 Thana- KASBA District- Purnia

1. Kunia Mandal S/o Rajdeo Mandal resident of village - Ranugawn Orahi
Pashim, Taruna Basti, P.S. Simraha, District - Araria.
2. Awdhesh Mandal S/o Bachan Mandal resident of village - Renugawn Orahi
Pashim, Taruna Basti, P.S. - Simraha, District - Araria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 443 of 2016

Arising Out of PS. Case No.-129 Year-2012 Thana- KASBA District- Purnia

Turai Mandal @ Shiv Narain Mandal son of Late Sukhdeo Mandal resident of
village Sarachiya, P.S. Kasba District Purnia.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (SJ) No. 381 of 2016)
For the Appellant/s : Mr.Abhijeet Gautam, Adv.
For the Respondent/s : Mr. S. A. Ahmad, APP
(In CRIMINAL APPEAL (SJ) No. 258 of 2016)
For the Appellant/s : Mr. Bhola Prasad, Adv.
For the Respondent/s : Mr.Binod Bihari, APP
For the informant : Mr. Radha Mohan Singh, Adv.
(In CRIMINAL APPEAL (SJ) No. 443 of 2016)



For the Appellant/s : Mr.Kamal Kishore Jha, Adv.
For the Respondent/s : Mr. Zeyaul Hoda, APP
For the informant : Mr. Radha Mohan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

06-11-2019

Before coming to main track, certain incidents falling in between have to be noticed and the same is being incorporated below.

2. On the written report of one Shatrudhan Das with regard to kidnapping of his minor daughter (name withheld), Kasba PS Case No. 129/2012 was registered and, after completing investigation, first charge-sheet was submitted against Nitya Nand Mandal (appellant of Criminal Appeal (SJ) No. 381 of 2016), keeping investigation pending against others, who faced Sessions Trial No. 121/2013, convicted and sentenced, after having his case bifurcated. .

3. Some of the remaining accused were apprehended against whom supplementary charge-sheet was submitted namely, Turai Mandal @ Shiv Narain Mandal, (appellant of Criminal Appeal (SJ) No. 443 of 2016), who faced Sessions Trial No. 805/2013 and got convicted & sentenced, keeping investigation pending against others.

4. Another supplementary charge-sheet has been submitted against Kunia Mandal and Awdhesh Mandal, (appellants of Criminal Appeal (SJ) No. 258 of 2016) keeping



the investigation pending against remaining accused who faced Sessions Case No. 1110/2014, convicted and sentenced.

5. All these three Sessions Trials, i.e. to say, Sessions Trial Nos. 121/2013, 805/2013 and 1110/2014 earlier were pending before different courts but, in due course of time came up before the same court and, all the Sessions Trials have been disposed of by the same court that means to say, by the 3rd Additional Sessions Judge, Purnia, Bihar vide judgment of conviction dated 23.02.2016 and order of sentence dated 29.02.2016 whereby all the appellants have been found guilty for the offences punishable under Sections 363, 366A, 370 of the IPC and each one has been sentenced to undergo RI for seven years and to pay fine of Rs. 35,000/- and in default thereof, to undergo RI for one year, under Section 366A IPC, RI for five years as well as fine of Rs. 25,000/- and in default thereof, to undergo RI for a year additionally, under Section 363, 370 IPC respectively, appellant, Nitya Nand Mandal has further been found guilty for an offence punishable under Section 376 IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 50,000/- and in default thereof, to undergo RI for a year, with a further direction to run the sentences concurrently, with a further direction that the period



having undergone will be set off in accordance with Section 428 CrPC.

6. Because of the fact that the illegality, mistakes having been committed at the end of the learned lower court during course of sailing with all the three Sessions Trial, will affect the finding so recorded by the learned lower court, on account thereof, for better appreciation of the fact as well as law, irrespective of the fact that all the three Sessions Trial referred above, have been disposed of independently but on the same day by the learned lower court, on account thereof, is being disposed of by a common judgment.

7. As per written report filed by Shatrudhan Das is that his daughter, victim (name withheld) became traceless one day before Deepawali in the year 2011. They made hectic search but in vain. They had gone to the police but failed to oblige them so, no case was registered. It has also been disclosed that on 16.08.2012, one Janak Mandal of Jalalgarh Block working at Sonipat, Haryana informed him that his daughter (victim) is engaged as a domestic help in a Kothi at Sector No. 15 of Sonipat. It has further been disclosed at his end that she has been sold out and after *Eid*, she will be handed over to her purchaser. After receiving the information, he proceeded on



17.08.2012, reached at Sonipat on 19.08.2012, anyhow, contacted Janak Mandal and with the help of SHO, Sonipat Police Station, the victim was recovered from the house of Nitya Nand Mandal, Sector 15 of Sonipat along with Nitya Nand Mandal and they both were taken to police station. In the evening, the victim was handed over to the informant who, on query disclosed that on the fateful day, while she was coming to home, a tempo stopped near her, over which, five persons were sitting. Out of them, three persons put handkerchief on her mouth, as a result of which, she became unconscious and then she was lifted. After regaining some sense (semi consciousness) she found herself at Katihar railway station surrounded by 5-6 person including a female. Thereafter, they all have taken her to some unknown place where she was kept for four days and during midst thereof, the victim could know about them. Then thereafter, Nitya Nand Mandal, Mamta Devi wife of Nitya Nand Mandal, Sanjit Mandal, Ranjit Mandal, Kunia Mandal, Awdhesh Mandal, all of village-Henu Hangna Tarona Basti, PS-Simraha, District-Araria took her to Sonipat on the day of Chhath and kept her in a rented house at Sector No. 15 where she was engaged in cooking food. She was forced to live along with them. Then thereafter, she was engaged at a Kothi as a cook on



monthly emolument of Rs. 5000/-, and the money was being received by Nitya Nand Mandal. After some time, Mamta Devi, wife of Nitya Nand Mandal came to native place and, in her absence, Nitya Nand Mandal used to commit rape with her against her will and wish. In the month of Ramazan, 2012, a Muslim fellow came and negotiated and finally on consideration of Rs. 40,000/-, she was sold to that Muslim fellow who paid the money but said that as month of Ramazan was going on, therefore, he will carry the girl after *Eid*. During midst thereof, she has been rescued by the police at the instance of informant.

8. The dark side of the present scenario is evident from the written report itself which, annexed the copy of the letter having addressed to District Magistrate-cum-Chairman, Illegal Human Trafficking as well as Child Welfare Committee. It is further evident from the annexure that victim as well as her father (informant) was examined by the Child Welfare Committee on 01.09.2012 and, the Child Welfare Committee, Purnia had also addressed a letter to the District Magistrate as well as that of Shatrughan Das (informant).

9. It is further evident that after registration of Kasba PS Case No. 129/2012, investigation proceeded and culminated in a manner as indicated hereinabove, while further



investigation is still pending against remaining accused.

10. 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 submitted that victim was major, she on her own volition accompanied, Nitya Nand, remained with him. After appearance of the informant, she was emotionally blackmailed and then, instant case has been registered.

11. Learned counsel for the respective appellants have submitted that the finding recorded by the learned lower court happens to be mechanical one, without considering the intervening circumstances which completely dethrones the prosecution case right from its inception.

12. In order to buttress such plea, it has been argued that victim had travelled from Katihar Junction to Sonipat without any hitch and hindrance by train. Had the victim not been a consenting party, she had every opportunity to resist, revolt and in that circumstance, it would not be possible for the appellants including others to carry on with their activity so alleged. In likewise manner, from the evidence of the victim, it is abundantly clear that the Kothi where she used to visit, was at a considerable distance, the Kothi where she was engaged,



had her presence alone, then in that event, was not being a consenting party, would have taken recourse of at least with the help of the land-lady as, it was not a one day affair rather months together, and so, no offence is made out against the appellants.

13. Learned APP repelling the points having been raised on behalf of the appellants, has submitted that those things are not at all relevant in the background of the status of the victim to be minor and so, finding recorded by the learned lower court, is fit to be confirmed.

14. Now the real picturization of the illegality committed by the learned lower court is to be seen. While Sessions Trial No. 121/2013 was sailing, the other two Sessions Trial also came before the same court and, as is evident right from the evidence of PW-3, the evidence of each of the witness was photo copied and tagged with other remaining Sessions Trial numbering as PW-3 of Sessions Trial No. 805/2013 and PW-2 of Sessions Trial No. 1110/2014. In likewise manner, deposition of PW-4 of Sessions Trial No. 121/2013 has been photo copied and then tagged with Sessions Trial No. 805/2013 as PW-4 and Sessions Trial No. 1110/2014 as PW-5. Deposition of PW-5 of Sessions Trial No. 121/2013 has been photo copied



and tagged with Sessions Trial No. 805/2013 as PW-5 and Sessions Trial No. 1110/2014 as PW-5, deposition of PW-6 of Sessions Trial No. 121/2013 has been photo copied and tagged with Sessions Trial No. 805/2013 as Serial No. PW-6, deposition of PW-6 of Sessions Trial No. 121/2013 has been photo copied and tagged with Sessions Trial No. 805/2013 as PW-7 and Sessions Trial No. 1110/2014 as PW-7.

15. Photo copies of exhibits have been procured from Sessions Trial No. 121/2013 and tagged with the record of relevant Sessions Trial No. 805/2013, 1110/2014. Though, marking happen to be relating to Sessions Trial No. 121/2013. Furthermore, the evidence of remaining witnesses have been intermingled in between Sessions Trial No. 805/2013 as well as Sessions Trial No. 1110/2014.

16. The procedure adopted by the learned lower court during course of conduction of the trial happens to be contrary to the spirit of law. Under Code of Criminal Procedure, there happens to be no provision whereunder photo copy of deposition of a witness could be used as an evidence relating to supplementary case record rather, the witness has to be examined independently relating to original records as well as supplementary records. Apart from this, as per Section 273 of



the CrPC, the evidence of the witness has to be recorded in presence of the accused though there should not be physical presence as, Section 317 CrPC as well as Section 205 of the CrPC are there whereunder the accused may have his appearance though his learned counsel but, with a caution that during course of trial, he will not be in a position of raising objection over identification as has been settled at rest by the Hon'ble Apex Court in ***Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.*** reported in ***(2001) 7 SCC 401***.

17. In accordance with Section 302 CrPC, the accused is to be properly defended during course of conduction of trial. From the successive deposition, the same theme is found duly frustrated.

18. The use of photo copy of a document is only permissible under the Civil Court Rules while reconstructing a missing record by the order of the District Judge and not in other circumstance. Photo copy of document is also not legally permissible rather, the same is to be substituted through the certified copy replacing the original. These systems are prescribed under Civil Court Rules.

19. As is evident, as procedure adopted by the learned lower court, during course of trial, is not at all found in



consonance with the procedure so prescribed under CrPC and that being so, all the judgments impugned, do not justify its prevalence whereupon, the same is set aside. All the three appeals are allowed. Matter is remitted back to the learned lower court with a direction to proceed afresh in accordance with law and for that, Superintendent of Police, Purnea is directed to procure attendance of all the witnesses so that, the trial be concluded at an earliest.

20. Appellants who are under custody, are hereby, directed to be produced before the learned lower court relating to concerned Sessions Trial. Office to transmit the lower court records at once.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
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