

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.318 of 2016

Arising Out of PS. Case No.-183 Year-2013 Thana- CHAINPUR District- Kaimur (Bhabua)

Sudama Sai, Son of Late Jay Mangal Rai R/o village - Diurma, P.S. Sonhan District Kaimur at Bhabhua at Present resident of village - Ahirwalia, P.S. Kudra, District - Kaimur at Bhabua.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 09-08-2019

1. Appellant , Sudama Sai has been found guilty for an offence punishable under Section 366A of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for six months, additionally, under Section 376(C) IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5000/- in default thereof to undergo R.I. for six months, additionally, under Section 4 of the POCSO Act and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for six months, with a further direction to run the sentences concurrently by the judgment of conviction dated 03.12.2015 order of sentence dated 09.12.2015 passed by First Additional Sessions Judge-cum-



Special Judge, POCSO Kaimur at Bhabhua in connection with Trial No.2/2014 arising out of Chainpur P.S. Case No.183/2013.

2. Kabutari Devi (PW.1) filed written report on 08.12.2013 disclosing therein that at an earlier occasion there was religious congregation and in order to facilitate the same, they have invited Sudama Sai. During course thereof, he had frequent visit continued even after congregation. During course thereof, Sudama Rai developed good repo with all the family members and, under garb of aforesaid eventuality he took away her daughter (name withheld, PW.10) aged about 16 years to his Ashram. She along with other met repeatedly by going there and requested the Sudama Sai to let her daughter free but, he did pay heed to it. Her daughter had also shown inclination to come therefrom but was not allowed by the Sudama Rai. Then, thereafter she approached Nari Adalat and, all the members thereof including she herself came at the Aasharam apprehended the Sadhu, got her daughter rescued, brought to the local police station where they have been produced along with submission of the written information.

3. After registration of Chainpur P.S. Case No.183/2013 investigation commenced and concluded by way of



submission of charge sheet followed with trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from made of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced in defence.

5. In order to substantiate its case prosecution has examined altogether ten PWs who are PW.1-Kabutary Devi, PW.2-Kalawati Devi, PW.3-Rina Kuwer, PW.4-Anita Devi, PW.5-Pushpa Devi, PW.6-Gira Devi, PW.7-Maya Devi, PW.8-Dr. Ambar, PW.9-Manoj Kumar No.1, PW.10-Victim. Side-by-side has also exhibited, Ext.1-Signature of informant over written report, Ext.2-Medical examination report, Ext.3-Pregnancy Test Report, Ext.4-Consent letter given by victim, Ext.5-Report submitted by Krishna Mohan Singh after examination of vaginal swab, Ext.6-Ultra Sound and Ext.7-Formal FIR. As stated above, nothing has been adduced at the end of the defence.

6. Heard learned counsel for the appellant as well as learned APP. Gone through the record.

7. From perusal of the record, it is evident that prosecution has adduced three kinds of evidence. The first one is that of PW.1 to PW.4, informant and her family members, second



set of evidence that of PW.5, PW.6, PW.7 and PW.8 members of the Mahila Gang who got the victim rescued from the Aashram also apprehended the appellant and produced before the police. PW.9 is the I.O. and PW.10 is the victim herself.

8. From the evidence of PW.1 to PW.4, it is evident that virtually they have acknowledged the appellant as their Guru and they reciprocated in same manner identifying themselves as dexible. Under the aforesaid relationship, the appellant had free access and taking benefit thereof, came in contact with the victim who, after meeting at different occasion got influenced slipped and gone to Math in company of appellant. She remained there even during intermediary period. She was taken a back by her mother PW.1, but ultimately, could not succeed. It is also evident that victim happens to be literate. It is also evident that police was not at all informed at an earlier occasion. PW.5, PW.6, PW.7 have stated that after having been informed by the Kabutari PW.1 they gone to the Math, got the accused (appellant) as well as victim apprehended and then, took them to Kudra Police Station where the police official declined to register a case. Then, they have gone to Chainpur where case has been registered.

9. From the evidence of PW.8, doctor it is evident that the victim was habitual to sexual intercourse, was pregnant



and on the date of examination there was incomplete abortion. It is further found from the evidence that her age has been estimated between 17 to 18. PW.9 is the I.O. who has deposed simply that after registration of the case, investigation has been entrusted to him whereupon, he took further statement of the informant, visited the place of occurrence which happens to be the house of the informant, recorded statement of the witnesses, got the victim examined under Section 164 Cr.P.C., got her medically examined. Transfer certificate of the victim has been furnished by the informant and then, after completing investigation submitted charge sheet. During cross-examination at para-3 he has admitted that he had not visited the place where the accused (appellant) as well as victim were residing that means to say, at Math.

10. Victim is PW.10. She has deposed that this case has been registered about 2 years ago. Occurrence is also about two years ago. Sudama Sai had not taken her away. She had herself gone there. Sudama Sai was residing in a hut at Kudara. She used to cook food for him. She engaged herself in rituals. She became pregnant. She became pregnant at the instance of Sudama Sai. She was medically examined. When police brought her for medical examination then, doctor had informed that she is pregnant. Thereafter, lady doctor had submitted her report. Her



statement was recorded before the Magistrate. She had deposed according to her will. In para-4 she had stated that she along with her mother used to visit Aashram of the Sadhu during religious congregation. Sadhu used to visit her house also. There was good repo in between. Sadhujee had not enticed her away rather, out of free will she had gone to his place. In para-5 she has stated that members of the Mahila Mandali took her out from the Aashram. At that very time, Sadhujee was not present. Sadhujee came from Sasaram and then, police apprehended him. In para-6 she has stated that she had made statement under Section 164 Cr.P.C. without any duress. In para-7 she has stated that Sadhujee had not taken her away forcibly nor enticed her nay allured her. She on her own had gone to Aashram. Then she denied the suggestion that she was not pregnant at the instance of Sadhujee then at para-9 she has shown her date of birth as 01-09-1998.

11. From the evidence as available on the record it is crystal clear that victim on her own had gone to the place of appellant/accused but, her continued presence at that very place knowing full well that she was a minor and further, indulgence in sexual relationship as a result of which, victim became pregnant, even voluntarily, being a consenting party did not allow a passage for safe escape in the background of the fact that the defence on



his own took risk in getting the date of birth from the mouth of the victim as 01-09-1998. As per evidence, the case has been instituted on 08.12.2013 and since six months prior to the aforesaid date, victim was in the company of the appellant and so, she was near about age of fifteen years at that very moment which has not been controverted nor challenged at the end of the appellant. That being so, ascertainment of age of victim by medical examination could not be taken into consideration more particularly, considering the principle decided by the Hon'ble Apex Court 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**. It is needless to say that the victim is literate. Because of the fact that the victim was a consenting party and that happens to be reason behind that she has not further been cross-examined which ought to be at least, on what basis she has disclosed her date of birth as 01-09-1998.

12. Be that as it may, on account of status of the victim being minor, the finding so recorded by the learned lower court did not attract interference save and except nullifying the finding relating to Section 366A of the IPC and to that extent, the judgment impugned is set aside. Conforming the finding relating to Section 376(C) IPC as well as Section 4 of the POCSO Act



inconsonance with the sentence so inflicted therefor. Appeal is dismissed in terms so discussed herein above. Appellant is under custody which he will remain till saturation of the period of the sentence.

(Aditya Kumar Trivedi, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.08.2019
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