

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.353 of 2023

Arising Out of PS. Case No.-68 Year-2018 Thana- MAHILA P.S. District- Nalanda

Sanjeet Das, Son of Late Banwari Das @ Banwari Mochi, Resident of Village
- Oiyaw, P.S. - Asthawan, Distt. - Nalanda

... .. Appellant/S

Versus

The State of Bihar

... .. Respondent/S

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Mrs. Vaishnavi Singh, Adv. Mrs. Kiran Kumari, Adv. Mr. Ritwik Thakur, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, APP.
For the Informant	:	Mr. Dharmendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-12-2023

1. We have heard Mr. Ajay Kumar Thakur, learned Advocate for the sole appellant; Mr. Dharmendra Kumar Singh, learned Advocate for the informant (mother of victim) and Mr. Bipin Kumar, learned APP for the State.

2. The appellant has been convicted under Sections 376(3) of the Indian Penal Code and Section 4 and 6 of the Protection of Children from Sexual



Offences Act, 2012, *vide* judgment dated 23.02.2023 passed by the learned Additional Sessions Judge-VI-cum-Special Judge POCSO Act, Nalanda, Bihar Sharif in POCSO/G.R. Case No. 2673 of 2018, arising out of Mahila P.S. Case No. 68 of 2018. He has but been acquitted for the charges under Sections 365, 342, 504 and 506 of the IPC. By order dated 28.02.2023, curiously, the Trial Court has sentenced the appellant also for the offence under Section 366 of the IPC, in which there does not appear to be any recorded conviction, to undergo R.I. for seven years and a fine of Rs.10,000/-, which amount has been directed to be given to the victim. In the event of default of payment of fine, the appellant has been ordered to further suffer S.I. for six months. For the offence under Section 376(3) of the IPC, the appellant has been sentenced to undergo R.I. for twenty years, to pay a fine of Rs. 10,000/-, which amount shall also be given to the victim. In case of default of payment of fine, the



appellant would have to suffer S.I. for six months.

3. The sentences have been ordered to run concurrently.

4. The victim (P.W. 2) disappeared for about six years. No case was lodged with respect to her disappearance. She resurfaced only on 03.07.2018 with two children in her lap. She told her mother about what had happened to her in the past six years.

5. This perhaps is the basis for the mother of the victim (P.W. 1) to lodge the written report, addressed to the Officer-in-Charge of Mahila Police Station, Biharsharif, leading to the registration of the Mahila P.S. Case No. 68 of 2018, dated 08.07.2018, under Sections 365, 376, 504 and 506 of the IPC and Sections 4/6 of the POCSO Act, 2012.

6. According to the written report lodged by P.W. 1, as referred to above, it has been alleged that the victim reached her home on 03.07.2018 and



informed her that she was kidnapped by the appellant and kept in confinement. During the period of confinement, she was raped a multiple of times and she also was forced to deliver two babies. P.W. 1 has further asserted that the appellant, who is a teacher in a local government school, had always put up a pretence of helping the family in searching out the victim, but nobody knew that he himself was the perpetrator of the crime. The appellant is said to have threatened the victim of serious consequences in case she reported about the occurrence.

7. On the basis of the aforementioned written report, the subject FIR was lodged. The police after investigation submitted charge-sheet, whereupon cognizance was taken and the case was tried.

8. The Trial Court, after having examined eight witnesses on behalf of the prosecution found the prosecution version to be correct, so far as the appellant is concerned.



9. The informant (mother of the victim), however, has not supported the prosecution story at the Trial. She, in her cross-examination has stated that she had never given any statement to the police. The victim had never told her after her re-emergence after six years as to who had kidnapped her. The victim is already married and resides in her matrimonial home. The victim was in constant communication with her and had never complained against anything. She could identify the appellant in the dock only because the appellant is a co-villager.

10. The father of the victim though has not given a complete go by to the prosecution case, but has expressed his clear intention of not prosecuting the appellant.

11. It has been argued that from the deposition of the father of the victim, it would appear that his reluctance to support the prosecution case is not out of his having been won over by the defence; but



for the appellant being innocent.

12. Vijay, the father, has been examined as P.W. 4. At the time when the victim had come to her home after six years, he was at Mumbai and was communicated about that fact by his wife. The police had taken his statement after 2-3 days of the victim coming back home. He has also admitted that when the victim was not to be found in the year 2011, no case was filed by him or anyone of his family members. The reason ascribed was the belief that somebody may have kidnapped and perhaps killed the victim. About the case at hand, P.W. 4 has stated that his wife is illiterate and had put her thumb impression on whichever document was given to her. He has also curiously admitted of having given his daughter in marriage but has not stated the details of the new matrimonial home of the victim. He also knew the appellant because the appellant had been teaching in a local government school. The victim was studying in school, but not in the



same school where the appellant taught. The appellant in fact, according to the P.W. 4, helped the family in searching out the victim. P.W. 4 has but vehemently denied the suggestion that the instant case has been filed for appropriating compensation amount from the government.

13. P.Ws. 5 and 6, viz., Dr. Ram Kumar Prasad and Dr. Kumkum Kumari are the members of the Medical Board which had assessed the age of the victim. The assessment by the medical team appears to be based only on the X-ray reports, holding the age of the victim to be 17 to 18 years.

14. The victim was put to the aforesaid test on 09.07.2018.

15. If this assessment of the age of the victim is accepted to be true, then the victim would have been 11 to 12 years of age when she had gone missing.

16. The prosecution has chosen to bring one Musraf Jamal to the witness-stand to confirm the



age of the victim. He has proved the admission register of the school in which, in the year 2009 (28.08.2009), the victim had taken admission and her date of birth was recorded 03.03.1999.

17. By this account also, the victim would be around 11 to 12 years of age, when she had gone missing.

18. The investigation of this case, as we have found, is totally perfunctory. No effort was made by the Investigator to find out the parentage of the children, who were in the lap of the victim when she had re-surfaced. How old were they? All these facts were necessarily to be investigated.

19. It appears that the Investigator completely forgot about the accusation of the victim having come to her mother first after six years, with two children in her lap. Where had the victim been residing all this while and what is her present address also was never taken into account by the Investigator.



20. Prabha Kumari (P.W. 7), therefore, displays complete ineptitude and lack of professionalism in investigating a case with such a serious allegation of the victim having been kept in confinement when she was only ten years of age and then making her deliver two babies in succession.

21. She had recorded the FIR by the mother of the victim and had ensured the recording of the statement of the victim under Section 164 of the Cr.P.C. She had investigated the place where the victim was kept in confinement but the victim could not specifically state or identify such places. It was only found by her that the place from where the victim was taken away was only at a distance of 100 meters from the house of the victim.

22. In her cross-examination, she has specifically admitted of not having questioned any person of the neighbourhood or having inquired about the parentage of the two babies in the lap of the victim.



No effort was made by her also to know about the date of birth of the victim. She has only told the Trial Court that at the time of her kidnapping, she was studying in class VI.

23. It would be appropriate, if we examine in some greater detail, the deposition of the victim herself, who has been examined as P.W. 2.

24. The story, which the victim had narrated to her mother was repeated at the Trial in the examination-in-chief.

25. However, in cross-examination, she has stated that the appellant is a co-villager and a school teacher. She has admitted of being married, but to whom, she does not disclose. When further questioned, she admitted of having married somebody on 27th of November, 2020. She, therefore, expressed surprise and asserted that it would be the appellant only who would have fathered two children.

26. We have already noted that the age of



the two babies was neither disclosed nor investigated. Where were the babies being kept all this while has also not been stated.

27. The victim admits of staying in her matrimonial home with her husband.

28. It was of extreme importance for the Investigator to have found out, as to with whom was she married in the year 2020. If she had been married in 2020, there is every possibility that she would have given birth to a child from her union with her husband.

29. At this juncture, the Trial Court also should have asked questions from the victim. The Trial Court appears to have only recorded the statement without actually playing the role of a Trial Court, in quest for truth.

30. With such passive approach of the Investigator and of the Trial Court, the truth in this case has become the casualty.

31. The entire story narrated by the victim



to her mother, who ultimately has not supported the prosecution case, is highly unbelievable. It is absolutely inexplicable as to how the victim would remain in confinement, unknown to the world when she had been residing in the neighbourhood only and during this period, had delivered two babies. There were several opportunities when the deceased would not have been immobilized by the appellant. She claims to have come out of her confinement only when the appellant had visited some place, leaving the room in which the victim had been residing, unlocked. This may have happened a number of times in six years.

32. The story also does not appear to be reliable to us for the reason that nothing is known about the two babies in her lap. The details of the present matrimonial home of the victim also was necessarily to be inquired into for finding out whether the allegations against the appellant was correct.

33. The suggestion to the father of the



victim that the case has been lodged for earning compensation amount, therefore, appears to be true.

34. Most surprisingly, the appellant has got himself examined as a defence witness and he has admitted that he had married the victim and that she was of marriageable age when he had married her.

35. With these set of facts, it appears that all the specifics given by the prosecution regarding the date of birth of the victim, her admission in the school and the fact that she delivered two babies, are all incorrect.

36. Seen in this background, we are unable to understand as to why the appellant told the Trial Court under Section 313 of the Cr.P.C. that he has been framed because of village politics.

37. All this never raised the eyebrows of the Trial Court who merely recorded the deposition and after noting down many paragraphs of the various judgment of the Supreme Court, has convicted the



appellant under Section 376(3) of the Indian Penal Code and Section 4 and 6 of the POCSO Act, 2012.

38. He has very queerly sentenced the appellant under Section 366 of the IPC also without recording any conviction under that Section.

39. The reasoning of the Trial Court is as specious and skewed as the prosecution story itself.

40. We can only express our regret by saying "*O tempora, O mores*".

41. For the reasons aforementioned, the judgment and order of conviction is set aside and the appellant is acquitted of all the charges levelled against him, giving him the benefit of doubt.

42. The appeal stands allowed.

43. It is informed by the learned Advocate that the appellant is in jail. He directed to be released forthwith from jail, if not detained or wanted in any other case.

44. Let a copy of this judgment be



dispatched to the Superintendent of the concerned Jail
forthwith for compliance and record.

45. The records of this case be returned to
the Trial Court forthwith.

46. Interlocutory application/s, if any, also
stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/saurav-

AFR/NAFR	NAFR
CAV DATE	NA
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