

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1087 of 2017

Arising Out of PS. Case No.-271 Year-2015 Thana- DARIGAON District- Rohtas

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Sunaina Kumari D/o Suresh Singh, Resident of Village- Babhani, P.S.-
Kargahar, District- Rohtas.

... .. Appellant/s

Versus

1. State Of Bihar and Anr
2. Arun Kumar Singh, S/o Ramshray Singh, Resident of Village- Khaira, P.S.-
Darigawn Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. D.K Sinha, Sr. Adv.
For the Respondent No. 2	:	Mr. Ansul, Adv.
For the State	:	Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-09-2023

1. We have heard Shri D.K Sinha, the learned

Senior Advocate for the appellant, who is the

victim of this case, Mr. Ansul the learned Advocate

for the respondent no. 2, who is alleged to have



subjected the victim to sexual intercourse and Mr. Dilip Kumar Sinha, the learned counsel for the State.

2. The Respondent No. 2 was charged for kidnapping and raping the victim who shall henceforth be referred to as 'X'.
3. Vide Judgment dated 09.07.2017 passed by the learned First Additional Sessions Judge-Cum-Special Court POCSO, Rohtas at Sasaram, the Respondent No. 2 has been acquitted on account of different statements made by the victim, her father and her own uncle. Apart from this, the learned Trial Court has disbelieved the version of the victim on account of certain intrinsic anomalies appearing in her statement before the Trial Court.
4. According to the prosecution case, the victim was staying in the house of Respondent No. 2 with the consent of her parents. She was prosecuting her studies for acquiring computer knowledge while



residing with the Respondent No. 2 and his wife. Respondent No. 2. is the Maternal uncle (Mausa) of the victim. Evidence suggests that Respondent No. 2 was posted at Uttar Pradesh when the occurrence took place. The F.I.R was lodged by the own aunt of the victim, alleging that the victim had left the house for going to computer center on 25.02.2015 at about 8 'O' Clock in the morning but did not come back till late in the night. A search was made for her but to no avail. The aunt who has been examined as P.W-3 waited for some time before lodging the subject F.I.R against unknown for offences under Section 363 and 365 of the I.P.C.

5. During the course of investigation, the victim appears to have come back home and had made a statement under Section 164 Cr.P.C alleging that on 25.02.2015, she had met the Respondent No. 2 at the bus-depot, who insisted upon her to



accompany him to Mundeshwari temple. She was not taken to Mundeshwari temple; rather she was taken to a desolate place which appeared to be the end of a village where there was no habitation. The house in which the victim was kept by the Respondent No. 2 was very inadequately furnished. She alleges that she was kept in confinement in the afore-noted room of the house in question where nobody came except Respondent No. 2, for about 20 to 25 days and that but for the last day when she was brought to a desolate place again for her to go back home, every day she was subjected to sexual intercourse. Before the learned Magistrate who recorded her statement under Section 164 Cr.P.C, she expressed her desire of going back to her parents.

6. This statement was given on 28.03.2015. However, before that, the father of the victim who would be referred to in the case as 'Y' henceforth,



and who has been examined as P.W-6, went to the police station on 17.03.2015, i.e. much before the victim had come back home and had given a written report alleging that considering Respondent No. 2 and his wife to be close relatives, he had permitted his daughter to reside with them for the purposes of prosecuting her studies. However, later when he came to village Khaira to know about his daughter, neither respondent no. 2 nor his wife gave any plausible explanation about the absence of her daughter at home. He, therefore, suspected that perhaps the victim has been taken to some unknown destination by Respondent No. 2, either for the purposes of committing sexual intercourse with her or to sell her off to some sex-selling agency. He also went to the extent of alleging that the father of Respondent No. 2 and his wife admitted before him that Respondent No. 2 and the victim had gone out and that shortly they will



come back. Any hue and cry if made by P.W-6 would only impinge on the family prestige.

7. On such report, no separate case was registered against respondent no. 2 or for that matter against the informant of this case (P.W-3), who is also alleged to have abetted and assisted Respondent No. 2 in committing this crime.

8. At the Trial, seven prosecution witnesses were examined including the victim. The informant (aunt) has not supported the prosecution case and has only stated before the Trial Court that when the victim did not come back home for a long time and the search for her did not yield any result, she lodged a case of abduction against unknown persons. With respect to the charge against her husband (Respondent No. 2), P.W-3 has stated that she had informed Respondent No. 2 also about the incident, where after he came from Uttar Pradesh where he had been working and also



looked around for the victim.

9. Sudarshan Sharma (P.W-1), a co-village of respondent no. 2 did not allege anything against either P.W-3 or Respondent No. 2. The allegations against the Respondent No. 2 has been supported only by Rampravesh Singh who is the own uncle of the victim and has been examined as P.W-2 as well as 'Y' who is the father of 'X' and who has been examined as P.W-6. as noted above.

10. P.W-2 has stated at the Trial that he learnt about the Respondent No. 2 having taken away the victim and raping her. In this act, the wife of Respondent No. 2, namely, P.W-3 has also played a role. He has admitted that his elder brother, who is the father of 'X' always stayed at Bombay and 'X' resided with P.W-3 and Respondent no. 2. P.W-3 had informed him and another relatives about the victim having gone missing. On this information, he along with the father of the victim



had gone to the village Khaira, which is the village of Respondent No. 2. Another information which he has shared before the Trial Court was that Respondent No. 2 and P.W 3 stayed separately from their family members. Nobody including him and P.W-6 ever saw Respondent No. 2 taking away the victim to any destination. After about 20 to 25 days of the victim having gone missing, she reached home whereafter the information regarding her arrival was given to the police. He accompanied the victim to the police station but was not questioned by the police officer. Only his brother was questioned by the police officer. He has denied the suggestion that because of P.W-3 having chastised the victim for having come home late in the night, she became angry, left the home and falsely alleged act of sexual intercourse against Respondent No. 2.

11. Compared to this statement of P.W-2, it



would be profitable to refer to deposition of P.W-6, ('Y') the father. He claims to have gone to the house of Respondent No. 2 on 17th March, 2015 after coming back from Bombay. On the request of P.W-3 and taking into account that wife of P.W-6 was not maintaining good health, he had permitted his daughter to reside with Respondent No. 2 and P.W-3 for prosecuting her studies at Sasaram.

12. On 17th March, 2015, when he had gone to house of Respondent No. 2 to enquire about his daughter, he did not get any cogent reply regarding her absence. He was made to understand that the victim is not to be found and that a case has been lodged by P.W-3 against unknown for having abducted the victim, which allegation ofcourse was on the basis of presumption as the victim had not returned home. At that time, being dissatisfied with response of P.W-3 and others, he went to the police station and gave a report



(Exhibit-2) in which he has alleged that the Respondent No. 2 has intentionally kidnapped the victim and he might have caused harm to her or would have sold her to some persons.

13. What is noticeable in his deposition before the Trial Court is that he claims to have come back from Bombay on 8th February only. Another statement which raises eye-brows regarding his being truthful, is his disclosure before the Trial Court that the victim came back after about 8 to 9 days and before she had gone missing, she had been residing with Respondent No. 2 and P.W-3 only for two or three days. All the above noted statements are not borne out by the records or the statements made by other witnesses.

14. The victim, P.W-3 and the uncle of the victim, namely, P.W-2 have all stated that the victim came back home after 20 to 25 days and had been residing with P.W-3 and Respondent No.



2 for the last 4 to 5 months. If the father of the victim had come back to his home from Bombay on 8th of February, 2015, there was no justifiable reason for his having visited the house of P.W-3 or Respondent No. 2 on 17th of March especially, when he claims to be totally ignorant of the fact that the victim had gone missing from 25.02.2015. If P.W-6 is to be believed, he learnt about the victim having gone missing only on 17th of March and not before.

15. How to reconcile the deposition of P.W-6 who is the father of the victim and P.W-2 who is the uncle of the victim and who has categorically stated before the Trial Court that immediately after the victim having gone missing? P.W-3 had informed the family members including him about the victim having gone missing. He has also stated that on learning this fact, he along with P.W-6 visited the house of P.W-3 and Respondent No. 2.



16. Seen in this backdrop, we found it very necessary to examine the deposition of the victim rather intently. In her 164 Cr.P.C. statement, the victim has disclosed her age to 16 $\frac{1}{2}$ and the time of Trial, she has stated her age to be 18 years.
17. The records reveal that she was subjected to medical examination but the medical examination report has not been brought on record. That would have been the surest clincher about the victim being a minor at the time of the occurrence.
18. The I.O of this case also has not been examined.
19. The victim has stated before the Trial Court that she had met Respondent No. 2 at the bus-depot and on his insistence, accompanied him on a bus to some destination which she later realized was not on the way to Mundeshwari Temple where respondent no. 2 had promised to take her. Rather, she was made to walk on foot for a long time,



whereafter she was put up in a room with practically no furnishing, in a stand alone house at the end of a village. The victim did not find any house in the neighbourhood or in her line of vision. She claims to have been raped by Respondent No. 2 for all the 20 to 25 days that she was lodged in that particular home.

20. The place where she was kept in confinement was never visited by anyone.

21. Which was that place ? Was it in the same district? All these facts remains unknown especially because the I.O has not been examined in this case. The victim has not made any statement with respect to her fooding or regarding treatment to her while she was in the captivity of Respondent No. 2. All that she has stated is that the Respondent No. 2 used to keep her locked in the room whenever he went out. This continued for about 20 to 25 days. On the last day of her



captivity, she has stated that Respondent No. 2 took her to a desolate place somewhere in middle of the field and asked her to go back to her home and not to report the occurrence to anybody or else he would cause harm to his parents. While coming back to her home from the place where she was left, she met several persons of her own village, but with them, she did share anything. Did she walk the whole distance? Was the place she left located close to her house? These are all questions which have remained unanswered. Did the victim ever come out of the room in the absence of Respondent No. 2 ? Did Respondent No. 2 remain in the house for all the 25 days ?

22. We are also in a quandary for another reason. Did she suspect such foul intention of Respondent No. 2 in whose house she has come to reside voluntarily? Did she have complaints against her aunt/P.W-3 ? It appears to be rather strange



that the victim would accompany Respondent No. 2 to a desolate place on his asking and luring her to take a visit at the Mundeshwari Temple.

23. These aspects reveal that something may have happened which may not meet the eye especially in view of such mendacious statements by the witnesses and the victim herself. What provision was made by Respondent No. 2 for the fooding of victim for all 25 days?

24. We do reckon that it is not necessary for a victim of sexual assault, especially at the hands of her own relative, to state everything in detail in her 164 statement or before the Trial Court. But if a woman has remained in the captivity for 20 to 25 days, these small bits of facts would assume importance, If not for the purposes of testing the veracity of statements made by her then for testing whether anybody visited the house in the meanwhile or whether the victim had an



opportunity of exit in the absence of Respondent No. 2.

25. Seen in this background, the entire story of the captivity for 20 to 25 days in a desolate place with nothing in the neighbourhood, appears to be rather doubtful.

26. The victim came back home straightaway from the place where she was left. P.W-2 took her to the police station on the next day, on which date, perhaps the 164 Cr.P.C statement of the victim was recorded. This was on 28.03.2015. P.W-2, as we have noted, had gone to the house of Respondent No. 2 and he was accompanied by P.W-6. This had happened immediately after the lodging of the F.I.R by P.W-3.

27. Where was P.W-6 all this while? P.W-6, according to him only, had come back from Bombay on 8th of February, 2015 i.e. much before the victim went missing.



28. These are some of the aspects which were taken note of by the learned Trial Court in rejecting the prosecution case in its entirety.
29. That the I.O was not examined at Trial Court and the medical examination report was not brought on record further created doubt in the mind of the Trial Court.
30. How to adjudge that the victim was a minor at the time of occurrence for presuming the mental culpability under the POCSO Act, 2012?
31. It has long been settled that determination of age of a victim is also equally important, specially in view of the stringent provisions in the POCSO Act, 2012. This perhaps left the Court with no other information about the age of the victim except what was projected by the victim herself, which may or may not have been correct.
32. The victim has not raised any accusative finger at P.W-3 as an abettor to the crime.



33. Did something go wrong somewhere in the relationship ?

34. The victim while narrating her woes in her 164 statement conceded that she used to cook food for P.W-3 and Respondent No. 2. Was she made to work like a maid-servant which had irked her. Were the P.W-3 and Respondent No. 2 not affectionate towards her ? Did they renege from promise of keeping the victim well in their house, which could have irked the victim in alleging such things against Respondent No. 2? These are, for sure, conjectures but in the absence of the examination of the I.O., The Respondent No. 2 would be perfectly entitled to raise these doubts against the accusation made against him.

35. Though in an appeal against an acquittal, the Appellate Court can re-appreciate, review and reappraise the evidence but what cannot be forgotten is that in cases of acquittal, there is a



double presumption in favour of the accused.

Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a Court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but only reinforced, re-affirmed and strengthened by the Trial Court.

36. The law, we need not repeat, is well explained and settled that while deciding an appeal against an acquittal, the power of the Appellate Court is no less than the power exercised by the Trial Court, but the Appellate Court has to bear in mind and adhere to the age-old principle that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court ought not to disturb the findings of acquittal recorded by the



Trial Court.

37. We are conscious of some of the decisions which have struck a different note where it has been held that unless there is a substantial and compelling reason or good and sufficient grounds or very strong circumstances, ordinarily the verdict of the Trial Court ought not to be reversed. But finding no such limitation under the proviso to Section 372 and 378 of code of criminal procedure, we have found that it is difficult to place complete reliance on the deposition of the victim. In the same breath, we may not shy away from holding that the conclusions of the Trial Court do not appear to be distorted to us. There is no glaring mistake in the judgment of the Trial Court and all the circumstances have been discussed in a cogent manner.

38. The Trial Court has given benefit of doubt to Respondent No. 2.



39. We, for the reasons recorded in the preceding paragraphs, put our imprimatur on such finding and dismiss this appeal.

40. The appeal is dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Mayank/Sunilkr.

AFR/NAFR	AFR
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