

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1015 of 2019

Arising Out of PS. Case No.-124 Year-2015 Thana- ISUAPUR District- Saran

Police Singh @ Ranjit Singh @ Ramjit Singh, Son of Jai Mangal Singh @
Barister Singh @ Balistar Singh, Resident of Village - Pachnaur, P.S.- Taraiya,
Dist.- Saran.

... .. Appellant/S

Versus

1. The State of Bihar
2. Nag Narain Prasad, Son of Late Mahesh Prasad, Resident of Village-
Nagraj, P.S.- Isuapur, Dist.- Saran.

... .. Respondent/S

Appearance :

For the Appellant/s	:	Mr. Sitesh Kumar Shashi, Advocate. Mr. Sanjay Kumar, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, APP.
For the Informant	:	Mr. Krishna Bihari, Advocate. Mr. Rajendra Kumar Dubey, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-12-2023

1. We have heard Mr. Sitesh Kumar Shashi,
learned Advocate for the appellant; Mr. Krishna Bihari,
learned advocate for the informant and Mr. Dilip Kumar
Sinha, learned APP for the State.

2. The appellant has been convicted under
Section 366A of the Indian Penal Code and Section 6 of
the Protection of Children from Sexual Offences Act,



2012, *vide* judgment dated 25.07.2019, passed by the learned Additional District & Sessions Judge-I-cum-Special Judge, POCSO Act, Saran, in POCSO- 07 of 2017, CIS No. 75 of 2018, G.R. No. 5374 of 2015 arising out of Isuapur P.S. Case No. 124 of 2015. By order dated 31.07.2019, he has been sentenced to undergo R.I. for ten years, to pay a fine of Rs.50,000/-, in default of payment of fine, to further suffer S.I. for four months for the offence under Section 366A of IPC and to undergo R.I. for life, to pay a fine of Rs.50,000/- with a default clause for the offence under Section 6 of the POCSO Act, 2012.

3. The sentences have been ordered to run concurrently.

4. Apart from the appellant, one Asgar Mian was also put on trial and convicted under Section 366A of the IPC but was awarded a very light sentence of four months and a fine of Rs. 10,000/-.

5. We have been informed at the Bar that no



appeal was preferred by Asgar Mian and he is also no more in the world of living.

6. The FIR was lodged by the father of the so called victim, viz., Nag Narain Prasad, who has been examined as P.W. 3 at the trial. The FIR was lodged six days after the occurrence on 16.09.2015.

7. The appellant and one Raja Mian, son of late Asgar Mian, had visited the house of P.W.3 on 10.09.2015. It was practically at that time that his daughter, the victim, aged about 14 years, had gone out of her house to relieve herself. After sometime, the appellant and his associate (Raja Mian; never put on trial) left the house. After about half an hour, P.W.3 claims to have heard *hulla* that two persons have kidnapped a girl. On such information, he along with others came out of the house and saw that his daughter was being taken away on a motorcycle by the appellant and Raja Mian. P.W. 3, thereafter, went to the house of the appellant in search of his daughter, but could not



get any clue. All that the father of the appellant informed P.W. 3 was that the appellant and Raja Mian had gone out somewhere. P.W.3, thereafter, along with his father-in-law/Hazari Singh (not examined) came to the house of Raja Mian and met his father, viz., Asgar Mian. When P.W. 3 and his associates wanted to have a check of the house of Asgar Mian, he became angry and combative. P.W. 3, therefore, suspected that his daughter has been kidnapped and kept in the house of Asgar Mian. The kidnapping was for the purposes of marriage.

8. On the basis of the aforementioned written report, Isuapur P.S. Case No. 124 of 2015, dated 16.09.2015 was initially registered for investigation for the offences under Sections 366A/34 of the IPC.

9. It appears that the police after investigation submitted charge-sheet against the appellant and Asgar Mian, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.



10. The Trial Court, after having examined seven witnesses on behalf of the prosecution, has convicted the appellant as aforesaid.

11. After going through the records of this case, we can only lament at the manner in which the Trial Court has handled this case.

12. The victim has not been examined.

13. The witnesses, viz., sister and mother of the victim (P.Ws. 1 and 2 respectively) have stated before the Trial Court that after the recovery of the victim almost six months after the FIR was lodged, she was again kidnapped by appellant and many others who have been named in their deposition.

14. With this statement on record by the witnesses, it was the bounden duty of the Trial Court to have at least inquired regarding the whereabouts of the victim.

15. It further appears from the deposition



of one of the witnesses that the mother of the victim, viz., P.W. 2 had filed a complaint regarding the second kidnapping of the victim, which took place after three months of the release of the victim from the custody of miscreants.

16. Again, no efforts were made by the Court to find out whether the application under Section 156(3) of the Code of Criminal Procedure was actually acted upon and whether any investigation was made in that regard.

17. The duty of the Trial Court was necessitated more because the victim was never produced on the witness-stand. It would have raised eyebrows of any one, much less the Trial Court, that the victim has not participated in the Trial against an allegation of her being confined in the custody of the accused persons and her being raped for all the while. The victim was said to be a child of 14 years.

18. None of the tools available with the



Trial Court were ever used.

19. This is no judging. The Trial Court ought to have asked for explanation and only then should have taken a decision.

20. Be that as it may, even from the evidence available on record, the prosecution case appears to be tattering at the seams.

21. P.W. 3 had seen the appellant and one Raja Mian taking away his daughter. The daughter of P.W. 3 was 14 years of age. With this background fact, even if P.W. 3 was told by the investigator to wait for sometime and look for the victim before any case is filed, it is not readily acceptable that father of a kidnapped girl would wait for six days to lodge the FIR and that also with absolutely vague story-line.

22. We have also noticed that while kidnapping the victim, appellant was accompanied by Raja Mian, son of Asgar Mian. Raja Mian has neither



been charge-sheeted nor put on Trial but only his father/Asgar Mian was put on Trial and convicted as well.

23. It appears from the records that Asgar Mian was in custody in connection with another case when his wife had filed a case against the victim and two others for having pressurized Asgar Mian (then lodged in jail) to pay up Rs.60,000/- for the release of the victim girl, so that the accused persons could be set free.

24. The Trial Court was aware of such developments.

25. In this context, it would be necessary to refer to Exhibits- A, B and C brought on record at the instance of the defence.

26. Exhibit-C is the FIR lodged by the wife of Asgar Mian, which has been referred to above. That case went to trial. In the trial, the Investigator, viz.,



Santosh Kumar had deposed that he had investigated the allegation made by the wife of Asgar Mian and had found it to be true.

27. His deposition has been brought on record as Exhibit-B.

28. The Trial Court found truth in the allegation and *vide* Exhibit-A, convicted and sentenced Siraj Mian and Om Prakash Singh. The aforementioned two persons were said to be in unison with the victim of this case in staging a case of kidnapping, the purpose of which still remains unknown.

29. Precisely for this reason, the victim chose not to come to the witness-stand. An absurd allegation, thereafter, was put up for the first time during the trial about the victim again having been kidnapped when P.W. 3 refused to compound the earlier case. If this were so, the matter should have immediately been brought to the notice of the police. The Trial Court heard out P.W. 3 and his family



members regarding the kidnapping of the victim again after so many months of her release, but still did not consider it necessary to find out the location of the victim.

30. In this context, the deposition of the Investigator of this case, viz., Kanhaiya Ji Mishra (P.W. 5) would assume importance. Though he admits that the victim was recovered at a place which was 500 meters away from Chapra Jail Crossing, but the aforementioned fact was never recorded in the police papers.

31. There is no reference in the diary written by him about the recovery of the victim on 18.12.2015. Thus, for all practical purposes, it would be absolutely justified for the appellant to argue that there was no kidnapping and no recovery and the so called victim is residing with somebody else.

32. It was not for nothing that all the witnesses have been suggested that the victim herself



was an accomplice in getting a case of kidnapping filed and that she herself is in relationship with one Chandan Singh.

33. The Investigator has not even stated about the victim having been taken to a Judicial Magistrate for recording her statement under Section 164 of the Cr.P.C. However, from the records we find that she had made her statement before the Judicial Magistrate under Section 164 of the Cr.P.C., in which she had alleged rape at the hands of the appellant and Raja Mian.

34. We fail to understand as to how, if this statement under Section 164 of the Cr.P.C. was acted upon, Raja Mian was neither apprehended nor any effort was made to put him to the process of law.

35. The learned Judicial Magistrate who recorded her statement has also been examined as P.W. 4, who has certified that the victim had deposed before her.



36. It would now be relevant to look at the medical testimony. Dr. Sajiya Badar (P.W. 6) had examined the victim on her release from the clutches of miscreants. She had examined her on 19.12.2015 which is a day after she apparently was recovered by the police.

37. We have no idea as to who all were accompanying the victim when she was recovered and who were arrested in the process. She allegedly had been kidnapped on 10.09.2015.

38. The Doctor did not find any injury on her body including her private parts and assessed her age to be between 16 to 17 years. The Doctor did not find any evidence of pregnancy. No evidence of any recent sexual intercourse could be detected.

39. Juxtaposed with the deposition of the victim, the medical testimony may not hold as much importance but in a case of this kind where the victim has not been brought to the witness-stand and there is



an assertion of her sister and mother of her being kidnapped again, about which no case has been lodged or nothing is known about the complaint which has been lodged in that connection, the assessment of the age of the victim by the Doctor assumes importance.

40. The victim perhaps was never in confinement. She was never kidnapped. She was only assisting her accomplices to extract money from Asgar Mian, who though has been convicted but has died without preferring an appeal.

41. The fact that the case lodged by wife of Asgar Mian, which has been referred to above, has ended in conviction of one Shiraj Mian pre-supposes that the victim was a part of the conspiracy and that she had been hiding herself from the process of law.

42. The police was never informed about the second kidnapping, which perhaps had taken place according to the witnesses, before this trial began.



43. Thus, no part of the story propounded by P.W. 3 or supported by the sister and mother of the victim (who has been examined as P.Ws. 1 and 2) can be believed.

44. P.Ws. 2 and 3 have suggested a cock-and-bull story to the Trial Court and the Trial Court merely recorded their statement without putting any questions to them. No part of their deposition made any sense and the information provided by them was a complete drivel.

45. The entire process of the trial, in our estimation, has been reduced to a burlesque.

46. We are aghast with the manner in which such deposition in the background of documentary evidence, as referred to above, has been believed by the Trial Court and the judgment of conviction has been recorded.

47. The story of the prosecution stands



mired into deep doubt.

48. There is no way in which we can put our imprimatur on the conclusion arrived at by the Trial Court.

49. It appears that the appellant was on bail during the period of investigation and trial and was taken in custody only after the judgment was delivered.

50. For the reasons aforenoted, the judgment is set aside and the appellant is acquitted of all the charges levelled against him.

51. The appeal stands allowed.

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

53. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.



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

55. 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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