

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2979 of 2017

Arising Out of PS. Case No.-668 Year-2013 Thana- KHAGARIA District- Khagaria

Govind Sahni S/o Late Bisundev Sahni, R/o Mouza- Tetrabad, Village-
Tetrabad Chandpura, P.S.- Khagaria Gangaur, District- Khagaria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : None.

For the Respondent/s : Mr.Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 09-01-2023

No one appears on behalf of the appellant to press this appeal while learned APP Mr. Binod Bihari Singh, appearing for the State is present and he is heard on the merit of this appeal.

2. The instant Criminal Appeal has been filed against the judgment of conviction dated 30th June 2017 and order of sentence dated 10th July 2017 passed by Shri Ashok Kumar, learned Additional Sessions Judge 1st, Khagaria, in Sessions Trial Case No. 54/2014 (Computer Registration No. 12474/2013), arising out of Khagaria (Gangour) P.S. Case No. 668 of 2013.

3. As per the allegation mentioned in the FIR the informant's married daughter who is stated to be the victim in the instant matter was kidnapped by the convict (appellant) with an intention to marry her and thereafter the informant and her family members tried to search for the victim but did not get any



information about the victim and also contacted the appellant's family members who misguided the informant on some pretext.

4. On the basis of allegations levelled by the informant the FIR was registered under Section 366(A) and 120(B) read with Section 34 of the Indian Penal Code (in short 'I.P.C.') which set the criminal law in motion and accordingly, the investigation was initiated, during the course of investigation the victim was recovered and she was medically examined and her statement was also recorded under Section 164 Cr.P.C. before the Judicial Magistrate and after the completion of the investigation the charge-sheet was submitted under the same offences as of the FIR. During the trial the learned Trial Court examined altogether 8 witnesses produced on behalf of the prosecution who are as follows:-

P.W-1:- Hare Ram Yadav, Grandfather of the victim

P.W-2:- Mukesh Kumar, Hearsay witness

P.W-3:- XXXX, Brother of the Victim

P.W-4:- Shankar Yadav

P.W-5:- XXXX, Mother of the victim

P.W-6:- XXXX, Daughter of the informant/victim

P.W-7:- Sintu Kumar, Investigating Officer

P.W-8:- Dr. Jyotsana Kumar Sinha, Medical Officer



5. In documentary evidence the following documents were produced and marked as exhibits:-

Ext-1:- Signature of the informant/PW-5 on her written report.

Ext-2:- Medical examination report of the victim.

6. After the completion of the prosecution evidence, statement of the accused was recorded by the Trial Court in which he denied the circumstances appearing against him from the prosecution evidences and claimed himself to be an innocent person.

7. The appellant produced one defence witness and one documentary evidence as Ext- A.

8. After completion of trial, the learned Trial Court convicted the appellant for the offences punishable under Sections 366 and 376 of the I.P.C. and sentenced him to undergo rigorous imprisonment for 7 years for the offence of Section 376 of the I.P.C and also imposed Rs. 10,000/- as a fine upon him and in default of the payment of the fine he was directed to further undergo simple imprisonment for 6 months and in respect of the offence punishable under Section 366 of I.P.C. the appellant was sentenced to undergo rigorous imprisonment for 5 years and a fine of Rs. 10,000/- was also imposed upon him for the said offence



and in default of the payment of the said fine he was directed to further undergo 6 months of simple imprisonment. Both the sentences of imprisonment were directed to run concurrently.

9. I have heard learned APP Mr. Binod Bihari Singh, appearing for the State, perused the judgment impugned convicting the appellant and the order of sentence and also perused the evidences adduced by the prosecution during the trial and also taken into consideration the statement of the accused and his defence evidences.

10. The main point for consideration is whether the evidences produced by the prosecution during the trial are sufficient to justify the conviction of the appellant for the offences punishable under Sections 366 and 376 of I.P.C.

11. In the instant case, the evidence of PW-1 to 6 is very important. PW-1 is stated to be grandfather of the victim and he deposed that at the time of alleged occurrence of kidnapping he identified the accused in the light of a **Torch**. Similar evidence was given by the victim's mother who was examined as PW-5. From the deposition of both the witnesses one thing is quite clear that when the accused/appellant was taking the victim with him no resistance was made by the victim and one thing is also quite clear that the alleged incident came in the knowledge of mother and



grandfather of the victim since the time of happening of the said occurrence but the mother of the victim did not take any step to lodge the FIR and she and her family members remained mum for about 15 days and the said circumstance completely goes against the prosecution.

12. In this case the most important prosecution witness is victim who was examined as PW-7 and she deposed that initially the accused took her to **Karnal** where he locked her in a room and she lived there for about 10 days. She further deposed in the cross-examination that she lived at Karnal in a rented house and there were several rooms around the room in which she resided and several other persons also lived there. She further deposed that the accused brought her from Karnal to Sonbarsa where she stayed at the house of one Arvind Sahni. From these facts revealed by the victim in her cross-examination one thing is quite clear that the said victim had sufficient opportunity to resist the alleged act of the accused/appellant and from her evidence it can be presumed that she did not make any resistance against the act of the appellant which arises the inference that she was a consented party to the act of the accused/appellant. Here it is relevant to mention that while recording the statement under Section 164 of Cr.P.C. the victim did not support the allegation



made in the FIR and at the time of recording her deposition her age was assessed 20 years by the Trial Court and she herself revealed the same age before the Trial Court which shows that the victim was above 18 years of age when the alleged occurrence took place.

13. The medical evidence given by the doctor concerned who examined the victim also does not support the alleged forceful sexual relation, though the victim was medically examined several days after the alleged kidnapping and rape but in view of the evidence given by the victim before the Trial Court the said medical evidence appears to be going against the prosecution's allegation. During the course of argument it was argued by learned APP that during the course of investigation the victim was recovered in the market with uncle of the appellant. But there was no conclusion by the I.O. that the victim made any type of resistance against the uncle of the appellant when she was along with him in the market which also shows that the victim was a consented party to the act of the uncle of the appellant.

14. Considering the above evidences adduced by the prosecution during the trial of the appellant I think the conclusion made by the Trial Court while convicting and sentencing the appellant is not proper and the same was made without proper



appreciation of the prosecution evidence hence, the conviction of appellant and sentence imposed upon him by judgment and order impugned are liable to be set aside so, the said conviction and sentence stands set aside and the appellant is hereby acquitted of the offences punishable under Sections 366 and 376 of I.P.C. for which he was convicted by the Trial Court and he and his sureties are freed from the liability of the bail bonds taken during the course of appeal while releasing him on bail. In the result, the instant appeal stands allowed.

(Shailendra Singh, J.)

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AFR/NAFR	NAFR
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