

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.481 of 2006

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Sitaram Mandal, Son of Narayan Mandal, resident of village-Chediya Mandal
Tola, Police Station- Kurshela, District- Katihar

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Sarandha Suman, (Amicus Curiae)
For the Respondent/s : Mr. Ram Chandra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 01-05-2024

Heard Mrs. Sarandha Suman, learned counsel for
the appellant(*Amicus Curiae*) and Mr. Ram Chandra Singh,
learned A.P.P for the State.

2. This appeal has been preferred by the appellant
being aggrieved and dissatisfied with the judgment of
conviction and order of sentence dated 31.05.2006 passed by
the learned Additional District and Sessions Judge, Fast Track
Court, IV, Katihar in Sessions Trial No. 508 of 1996, arising
out of Kursela P.S. Case. No. 52/1995, whereby and
whereunder the appellant was found guilty and convicted for
the offences punishable under Sections 363 and 366(A) of the
Indian Penal Code and he was sentenced to undergo rigorous
imprisonment for a period of three years under Section 363 of



IPC and to undergo rigorous imprisonment for Five years under Section 366(A) of the IPC. The appellant was also directed to deposit the fine of Rs. 500 under each section respectively and in default of payment, he was sentenced to undergo rigorous imprisonment for three months respectively.

3. The prosecution case as per the Fardbeyan of the F.I.R, the informant(Naresh Kumar Mandal, P.W.-1) on 14.08.1995, he got his statement recorded before the officer-in-charge of Kurshela Police Station alleging therein that on the date of alleged occurrence, when he did not find his sister at his house then a hectic search was made but went in-vain. Later on, he came to know that at the house of the appellant, the other co-accused Chandeshwari Mandal and Ashok Mandal had come but now they are not there. Thereafter, he also came to know that at the instance of the appellant, the other co-accused has been enticed away the victim. Ultimately, the victim was found near the Bihpur Railway Station, where the victim disclosed that the accused Chandeshwari Mandal and Ashok Mandal had brought her.

4. On the basis of aforesaid fardbeyan of P.W.-1 dated 14.08.1995(Ext.1), the I.O after completion of investigation, submitted charge-sheet in the offence under



Sections 363, 366(A), 376 and 120(B) of the IPC. Accordingly, the cognizance was taken in the aforesaid sections and the case was committed to the Court of Sessions for trial and disposal.

5. Charge was framed against the accused appellant(Sitaram Mandal) under Sections 363 and 366(A) of the IPC. Trial Court explained the charge to the appellant to which he pleaded not guilty and claim to be tried.

6. The point of consideration in this appeal is whether the prosecution is able to prove the charge levelled against the accused appellant beyond reasonable doubt or not.

7. During the course of trial, altogether six witnesses were examined on behalf of the prosecution to substantiate the charge levelled against the accused/appellant. P.W.-1 Naresh Mandal(informant), P.W.-2 Mira Devi(mother of the victim), P.W.-3 Jagdish Mandal(father of the victim girl), P.W.-4 Baleshwar Mandal(independent witness) P.W.-5 Bhagirath Mandal and P.W.-6 Kailash Mandal(formal witness).

8. P.W.-1(informant) deposed in his evidence that on the relevant date of occurrence, the victim girl was not found in the house on 09.08.1995. Hence, he had started



searching his sister. He had got some information that she was living in Bihpur Thana. Besides this, he had also searched his sister in the house of Sitaram Mandal(appellant) and Chandeshwari Mandal. He had knowledge that one Ashok Mandal as well as Chandeshwari Mandal were not been present in their houses. He had doubt that appellant Sitaram Mandal, Suresh Mandal, Chandeshwari Mandal and Ashok Mandal were doing business of kidnapping of girls and selling them for business. The informant as well as others had gone to Thana Bihapur and they had found that his sister was there in a hut near the wireless tower. They had seen Chandeshwari Mandal after that Chandeshwari Mandal was arrested and he was taken before the Officer-in-charge, Kursela PS with victim. He had given his statement before the O/C, Kursela and he had signed on his fardbeyan. Fardbeyan has been marked as Ext-I. He(informant) has identified the accused appellant Sitaram Mandal and claimed to identify all the accused persons. He has supported the prosecution case.

9. P.W.-2 Mira Devi who is the mother of the victim who supported the entire evidence of P.W.-1. Evidence of this witness shows that her daughter was caught



red handed in a thatched house with accused Chandeshwari Mandal and he was brought before the police. She has identified the accused Sitaram Mandal and claimed to identified the rest three accused persons.

10. P.W.-3 Jagdish Mandal who is the father of the victim girl. He deposed in his evidence that his daughter was kidnapped by the four accused persons. She was recovered near Thana Bihpur. He has corroborated the version of P.W.-1(informant) in his evidence. Further, he deposed in para-2 of his evidence that he has not seen the kidnapping by the accused persons.

11. P.W.-4 is Baleshwar Mandal who is an independent witness. He has not supported the prosecution case in his evidence as such, he was declared hostile.

12. P.W.-5 Bhagirath Mandal has not supported the prosecution case in his evidence and as such, he was declared hostile.

13. P.W.-6 is Kailash Mandal who is formal witness of this case.

14. Mrs. Sarandha Suman is appointed as amicus curiae for assisting the Court in this appeal who submitted that entire proceeding leading to present appeal conducted by



the trial court is without jurisdiction. Learned trial Court has not considered the fact that P.W.-4 and P.W.-5 have been declared hostile in their evidence and P.W.-6 is the formal witness. Learned trial Court has not considered the fact that neither the I.O nor the victim of this case have been examined which caused serious prejudice to the appellant and also trial Court has not kept in mind the fact that P.W-2 who has clearly deposed in para-4 of her cross-examination that she has not seen anyone to take away the victim. It is further submitted on behalf of the learned counsel for the appellant that as per the statement of the victim recorded under Section 164 of the Cr.P.C. wherein she deposed that she fall in love with one Ashok Mandal and later on she solemnized marriage with him and leading a conjugal life. She has not deposed any complicity of the appellant in kidnapping her. She further deposed that on the instigation of his maternal uncle, her brother lodged this FIR. There is delay of 5 days in lodging the FIR. The witnesses who supported the prosecution case, are family members of the victim. Hence, the impugned judgment and order of sentence are out and out illegal, bad in law and fit to be set-aside.

15. *In contra*, learned A.P.P. on behalf of the State



submitted that informant(P.W.-1) supported the prosecution case in his evidence. The judgment of conviction and order of sentence are based on consistent and cogent evidence passed by learned trial Court and the appeal is fit to be dismissed.

16. I have gone through the entire evidence adduced on behalf of the prosecution and rival submissions made on behalf of the learned *Amicus Curiae* on behalf of the appellant and learned APP for the State. In this case, the prime and star witness who is victim of this case, was not examined before the trial Court and this fact came into light that the victim has recorded her statement before the learned Judicial Magistrate under Section 164 of the Cr.P.C. but the statement of the victim was not proved in this case. P.W.s-1, 2 and 3 are family members of the victim. P.W.-4 and P.W.-5 were declared hostile and did not support the prosecution case. From perusal of the prosecution evidence of P.W.s-1, 2 and 3, it is established that no one has seen the alleged occurrence. The defense case is that the victim as alleged solemnized marriage with co-accused, namely, Ashok Mandal and the victim is on the verge of majority. She is matured and is living a conjugal life with the co-accused Ashok Mandal. This appellant has no specific overt act. P.W.s-1, 2



and 3 are interested with one another and their evidence was not supported by any independent eye witnesses. The victim herself was not appeared to adduce her evidence before the trial Court.

17. After discussion of the above, I am of this view that the prosecution has miserably failed to prove its case beyond reasonable doubt by its evidence and the appellant is entitled to get the benefit of doubt. The judgment of conviction and order of sentence passed by the trial Court only on the basis of hearsay evidence not on the basis of cogent and consistent evidence. No one is the independent witness in this case. Hence, the judgment of conviction and order of sentence are not sustainable and fit to be set aside.

18. In that view of the matter, judgment of conviction and order of sentence dated 31.05.2006 passed by learned Additional District and Sessions Judge, Fast Track Court, IV, Katihar in Sessions Trial No. 508 of 1996, arising out of Kursela P.S. Case. No. 52/1995 are hereby set aside.

19. The appellant is acquitted after giving benefits of doubt.

20. The appellant is on bail. He is discharged from the liabilities of the bail bonds.



21. Accordingly, the instant appeal is hereby allowed.

22. Mrs. Sarandha Suman(*Amicus Curiae*) was appointed to represent the appellant/accused. I put on record the words of appreciation for able assistance rendered by her in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 7,000/- (rupees seven thousand only) to Mrs. Sarandha Suman, towards her professional fee.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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