

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.399 of 2006

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Ajay Kumar Rai S/o Sri Krishnandan Rai resident of village Kushar, P.S.
Mahua, Distt. Vaishali

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Manindra Kumar, Adv.

For the Respondent/s : Mr. S. Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 01-04-2024

Heard Mr. Manindra Kumar, learned counsel
appearing for the appellant as well as Mr. S. Ashfaque
Ahmad, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
against the judgment and order of conviction dated
24.04.2006 and 26.04.2006 respectively passed by Sri.
Lakshman Sinha, First Additional Sessions Judge, Vaishali
in Sessions Trial No. 164 of 2003, whereby and whereunder
the learned judge convicted and sentenced the appellant to
undergo Rigorous Imprisonment for ten years for the
offence under Section 366 of the Indian Penal Code and
sentenced to undergo Rigorous Imprisonment for ten years
under Section 376 of the Indian Penal Code.

3. This case is on the basis of written report dt.



3.3.2002 filed by Maharani Devi, mother of the victim girl before the officer-in-charge of Mahua Police Station.

4. The prosecution case in brief is that, on 26.02.2002, in absence of informant/mother of the victim girl, accused Ajay Kumar Rai came to her house and kidnapped her minor daughter, aged about 14 years for the purpose of marriage. On 3.3.2002, the informant got knowledge that accused has kept the girl in his house and confined her in a locked room.

5. On the basis of written report given by mother of the victim girl, Mahua P.S Case No. 52 of 2002 was registered against the accused. After completing the investigation, police submitted charge sheet against the sole accused/appellant. Learned Chief Judicial Magistrate took cognizance and later on the case was committed to the court of Session for trial and disposal.

6. Charges under Sections 366(A) and 376 of the Indian Penal Code were framed against the accused. It was read over and explained to the accused/appellant in hindi to which he pleaded not guilty and claimed to be tried.

7. In this appeal, point for consideration is



whether the prosecution is able to prove the charges levelled against the appellant beyond the shadow of reasonable doubt or not.

8. To substantiate the charges leveled against the appellant, altogether six witnesses were examined by the prosecution as P.W.-1 Ramchandra Ram, P.W.-2 Tulsi Prasad Singh, P.W.-3 victim girl, P.W.-4 Maharani Devi (informant), P.W.-5 Dr. Binita Kumar, P.W.-6 Avinash Kumar Singh. From defense side, only one witness was examined.

9. P.W.-1 (Ramchandra Ram) in his deposition has stated that he has seen that the accused was going with the victim girl. He has further said that girl was kept confined in the house of accused. Learned counsel has emphasized the statement of this witness by saying that victim girl was not kidnapped but she was going with her consent. This witness has not said anything in his cross-examination.

10. P.W.-2 Tulsi Prasad Singh is hear-say witness. He got information about kidnapping of victim



girl by his brother.

11. P.W.-3 is victim girl. Her age was assessed by the court as 16 years on 28.8.2003. She had narrated the entire story of kidnapping in her deposition. She stated that accused had kidnapped her from her house and brought her to Patna and kept her there for 5-6 days and during that period, she was raped thrice by the accused and thereafter she was brought to Kolkata for one day and thereafter accused brought her to his home. Police has recovered her from the house of the accused and at the same time accused was arrested from his house. In para 2 of her cross-examination she has deposed that she could not raise alarm for help as her mouth was tied.

12. P.W.-4 Maharani Devi is informant. She has narrated the entire story as mentioned in her written report. When her daughter was got released from the house of the accused by the police, she came to her house and narrated the whole story to her mother in respect of kidnapping and rape. On the alleged date of occurrence, she went to Hat and her husband is a rickshaw puller and



went to Patna. At the time of alleged occurrence, her daughter was alone in her house. In her cross-examination, she deposed that prior to the occurrence, accused had never visited to her house and she had not seen the occurrence of kidnapping personally.

13. P.W.-5 Dr. Binita Kumar had examined the victim girl. She has not find any external injury on the person of the victim girl. She found hymen was torn and no any other injury on genital area. She said that hymen is old torn but she has explained old means more than 3-4 days. Doctor has not assessed her age during her medical examination.

14. P.W.-6 is formal witness. He has proved the writing of the case diary from page 1 to 81 which has been marked as Ext.-3.

15. P.W.-7 Ranjeet Kumar is defense witness. He has said that accused is villager and he lives with her mother and brother in common courtyard at Dhanarua.

16. Learned counsel appearing on behalf of the appellant has submitted that evidence of witnesses



suffered from serious infirmities and contradictions, which makes their case highly doubtful, unreasonable and untrustworthy. He has submitted that P.W.-1 has stated in his deposition that victim girl was going with the accused on foot. He has not seen that accused was taking her forcefully. Allegedly, accused person had kept her at Patna for 5-6 days and thereafter he took her to Kolkata but surprisingly and it is unbelievable that during course of journey, victim girl has not raised hue and cry for help. P.W.-3 (victim girl) in her deposition given contradictory statement as she has deposed that she could not raise alarm for help as her mouth was tied but this fact is not corroborated by any other witness. He further submits that occurrence took place on 26.02.2002 but FIR was lodged after a delay of five days. Age of the victim girl was not determined by doctor. Victim girl was sent for radiological test for determination of her age but radiological report has not been brought on record. Victim girl had herself stated before the police (mentioned in para-27 of the case diary) that she was in love with the appellant since one year before but her own



admission about love affair is totally ignored by the learned trial court. The testimony of the victim girl clearly depicts that she had voluntarily left her house and went with the appellant and she was in consensual physical relationship with the appellant. After recovery of the victim girl, her statement was not recorded under Section 164 Cr.P.C.. Investigation Officer of this case was also not examined by the prosecution, making the prosecution story completely weak and as such in absence of the evidence of I.O., the impugned order passed by trial court is bad, illegal and perverse in the eye of law. Further more, it is submitted that appellant had undergone judicial custody for more than five and half years. Finding of trial court is based on conjecture and surmises and same is fit to be rejected. Judgment and order passed by the learned trial court is otherwise erroneous and the same is fit to be set aside.

17. Learned APP appearing for the state has argued that the impugned judgment in question is based on cogent and consistent evidence, which is adduced by the prosecution witnesses. Victim girl is minor as her



mother has given her age in the FIR as 14 years. The Court has also assessed her age as 16 years, which suggests that victim is minor. Even if it is assumed that there was love affair between the victim girl and accused person and accused had established consensual physical relationship but minor's consent is irrelevant. Law does not permit the consent of a minor as a valid defense. In this case, the offence is well proved. Appellant is found proved guilty beyond the shadow of all reasonable doubts. Learned trial court has rightly convicted the appellant u/s 366(A) and 376 of the IPC by relying upon the evidence brought on record by the prosecution during trial. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed. The defense failed to discredit the evidence of the prosecution witnesses. The Investigating Officer had not been produced by the prosecution although efforts were done to procure the evidence collected during investigation.

18. After scrutinizing the evidence which are available on record, it is elicited that the victim is minor



girl, aged about 14-16 years at the time of occurrence. Victim girl (P.W. 3) who is a star witness has given evidence in respect of manner of the occurrence which appears to be cogent and consistent. The prosecution witnesses have been cross-examined at length but barring a few minor contradictions, nothing could be surfaced to discredit the testimony of prosecution witnesses.

19. I have gone through the entire oral and documentary evidence, available on record and rival submissions made on behalf of the learned counsel for the appellant as well as learned APP appearing for the State. Although six witnesses were examined but only P.W. 1 is said to be eye witness and he stated that he saw the accused was going with the victim girl. On 3.3.2002 victim girl was recovered from the house of accused. P.W.-3 victim girl is prime witness of this case and she deposed in her evidence that her age is 15 years and learned trial court also determined her age about 16 years. She was minor at the time of occurrence. She elaborately narrated the entire story of abduction from her house. He kept her at Patna for 5-6 days and during that period she was raped. She was cross-



examined at length but nothing surfaced to discredit her evidence by the defense. She corroborated her prosecution case and save and except minor contradictions, nothing major surfaced in her cross-examination, so the defense may get benefit of the same. P.W.-4 is informant and mother of the victim girl. She deposed that her daughter narrated her entire story in respect of her abduction and rape by this appellant. P.W.-5 Dr. Miss Vinita Kumar examined the victim. She deposed that she found that hymen was old torn but she has explained that old means 3-4 days old. Medical report is in consonance with the prosecution case. Victim was abducted on 26.06.2002 and recovered on 5.3.2002 and in this circumstances, spermatozoa cannot be found in vaginal swab. There is delay of five days in lodging the FIR and it is explained in the FIR itself that after knowing the whereabouts of the victim girl, informant has lodged the case to get release her daughter from the house of the accused. Learned trial court has rightly observed that the delay is not fatal in the prosecution. Learned counsel also submitted that age of the victim girl has not been determined by any doctor, so she cannot be said to be a minor. I find no force



in the contention as after one year of occurrence minor/victim deposed in her evidence that her age is 15 years. No evidence is brought on record that victim is major. Further contention raised by the learned counsel that victim has stated before I.O. that there was love affair and consensual sexual relationship with the appellant but in this case I.O. was not examined. Without examination of I.O. the story of love affair raised on behalf of defense is unbelievable and not properly proved. From the available evidence adduced on behalf of the prosecution, it is apparent that victim was minor at the time of occurrence and consent of minor is not valid in the eye of law. The impugned judgment of conviction is based on cogent and consistent evidence and the same is fit and proper. I found no infirmity, inconsistency or illegality in the same. Trial court has rightly convicted the appellant. There is no need of interference in the said judgment. The conviction of the appellant u/s 366(A) and 376 of the Indian Penal Code is hereby confirmed.

20. I have also gone through the impugned judgment which was passed by the trial court as well as



considering the fact that this case is of the year 2002 and the appellant had faced ordeal of trial since then. The appeal relates to year 2006. In this case, the appellant remained in jail for more than five and half years, which is apparent from order dated 10.09.2007 passed by another co-ordinate Bench of this Court .

21. Considering the period of custody as well as the ordeal of trial faced by the appellant, the appellant is sentenced to the period already undergone by him. The appeal stands dismissed with the aforesaid modification in sentence.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
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