

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.488 of 2006

CHANDESHWARI MANDAL s/o Sipahi Mandal r/v Kajikoriya, P.S. Kharik,
Distt. Bhagalpur.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bhola Prasad

For the Respondent/s : Mrs. Anita Kumari Singh

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 11-03-2024

Heard Mr. Bhola Prasad, learned counsel appearing
for the appellant as well as Mrs. Anita Kumari Singh,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
against the judgment and order of conviction dated
19.06.2001 passed by Md. Qayum Khan, Additional
District and Sessions Judge-cum-F.T.C. No. IV, Katihar in
Sessions Trial No. 508 of 1996, whereby and whereunder
the learned judge convicted and sentenced the appellant to
undergo Rigorous Imprisonment for three years and fine of
Rs. 500/- and in default of payment, further S.I. for three
months for the offence under Section 363 of the Indian
Penal Code and sentenced to undergo Rigorous



Imprisonment for a period of 5 years with a fine of Rs. 500/- and in default of payment, simple imprisonment for three months for the offence under Section 366(A) of the Indian Penal Code.

3. The prosecution case in brief is that, informant Naresh Kumar Mandal (P.W.-1) gave his fardbeyan that on 9.8.1995 he found missing his minor sister aged about 14 years from the house. During search, he came to know that nephews of accused Sitaram Mandal and Suresh Mandal, namely, Chandeswari Mandal and Ashok Mandal had come to his house and since then, his sister was found missing. For knowing the where-about of his sister, informant went to the house of Sitaram Mandal and Suresh Mandal to inquire about the matter and he came to know that his sister was kidnapped by Chandeshwari Mandal and Ashok Mandal with the help of their maternal uncle. On getting information of where-about of his sister, informant went to Bihpur on 13.8.1995 in search of his sister and he found his sister in a hut situated at Bihpur Railway Station near wireless tower. Informant found that appellant was also there, from where his sister was recovered. His sister



disclosed him that accused Chandeswari Mandal and Ashok Mandal had kidnapped her with the help of their maternal uncles, namely, Sitaram Mandal and Suresh Mandal, who are co-villagers of the informant. On next day of recovery of victim girl, her brother had given his fardbeyan and thereafter, a case was registered under Sections 363, 366A, 376 and 120B of the Indian Penal Code against the four accused persons, namely, Sitaram Mandal, Suresh Mandal, Chandeshwari Mandal and Ashok Mandal and S.I. Md. Islam was directed to investigate the case.

4. On the basis of written report given by P.W.-1, Kursela Police Station Case No. 52 of 1995 was registered against four accused persons. After completing the investigation, police submitted chargesheet on 9.8.1995 against them. On the basis of evidence during investigation, learned CJM, Katihar took cognizance and the case was committed to the court of learned Sessions Judge, Katihar.

5. It is pointed out that during trial, out of the four accused persons, trial of accused Suresh Mandal was dropped on 14.10.2004 as he had died. Accused Ashok Mandal was declared absconder on 5.7.2004 and permanent



warrant was issued against him.

6. 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.

7. To substantiate the charges leveled against the appellant, altogether five witnesses were examined by the prosecution as P.W.-1 Naresh Kumar Mandal (informant/brother of the victim)), P.W.-2 Mira Devi (mother of the informant), P.W.-3 Baleshwar Mandal (independent witness of the locality), P.W.-4 Bhagirath Mandal (independent witness), P.W.-5 Jagadish Mandal (father of the informant). From defense side, no any witness was produced.

8. P.W.-1 (informant) in his cross examination clearly stated that he had not seen the kidnapping of his sister by his own eyes. P.W. 2 is Mira Devi, mother of the victim girl, she has corroborated the entire evidence of P.W.-1. She had also not seen the occurrence by her own eyes. She had not taken the name of any accused person. Prosecution has declared her hostile because she



had denied her statement before the police. P.W. 3 Baleshwar Mandal, is an independent witness of the locality. He has not supported the prosecution case and turned hostile by the prosecution. P.W.-4 Bhagirath Mandal is an independent witness and he has also not supported the prosecution case. He has also denied his statement before the police and declared hostile by the prosecution. P.W.-5 is Jagdish Mandal, father of the victim girl. In para-2 of his examination-in-chief, he has stated that his daughter, aged about 16 years was kidnapped by the accused persons for the purpose of selling. On search, she was recovered on 13.8.1995 from Bihpur in a thatched hut . Convict-appellant Chandeswari Mandal was also present there from where, his daughter was recovered.

9. 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, totally unreasonable and untrustworthy. He has submitted that victim and accused Ashok Mandal was in love. At the



time of recording the statement of the victim girl, her age was assessed as 19 years. Victim willingly performed court marriage with Ashok Mandal on 24.8.1995 at Katihar and residing with him. He has further submitted that learned trial court has not consider that the P.W. 3 and P.W.-4 are independent witness, were declared hostile. P.W. 1 (brother of the victim/informant), P.W.-2 (mother of the victim) and P.W.-5 (father of the victim) are interested witness, who have supported the case of prosecution. The reliability of interested witnesses in criminal trial depends on the specific circumstances of each case and the credibility of their testimony. The court should carefully evaluate the evidence provided by interested witnesses and consider it with caution before reaching to a conclusion. Trial court has not consider the statement of the victim, which was recorded on 21.09.1995, in which she had denied the allegation of her abduction. It is apparent here that the trial court has not been able to brought the victim for recording her evidence, who herself given her statement before the Magistrate u/s 164 Cr.P.C.. It is not clear from the Lower



Court Record that after recording her statement u/s 164 Cr.P.C. on 21.09.1995, to whom she was handed over. Further more, it is submitted that appellant had undergone judicial custody for about two years. Learned trial court had acted illegally in relying upon the evidence of informant/P.W.-1 as well as other prosecution witnesses, who had the inimical term with the one of the co-accused, in convicting the appellant and reason given for holding the appellant are entirely erroneous, unsound and illegal. Finding of trial court is based on conjuncture and surmises and same is fit to be rejected. Judgment and order passed by the learned trial court is otherwise erroneous and bad in law and same is fit to be set aside.

10. 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. It is further submitted that it has not been proved during trial that victim girl had been married with the accused Ashok Mandal. The essential ingredients of charge u/s 363 IPC that the appellant in collusion with other accused persons had kidnapped the minor sister of the



informant on 9.8.1995 from her house for the purpose of selling, has been proved. Appellant is found proved guilty u/s 363 IPC beyond the shadow of all reasonable doubts. And also for illegal intercourse with co-accused Ashok Mandal had already been proved u/s 366A of the IPC beyond the shadow of all reasonable doubts. Learned trial court has rightly convicted the appellant u/s 363 and 366A 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.

11. After scrutinizing the evidence which are available on record, it is elicited that the victim is minor girl, aged about 16 years at the time of occurrence. Prosecution witnesses have 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.

12. After gone through the entire impugned judgment of conviction and sentence, I found no infirmity, inconsistency or illegality in the same. The impugned judgment of conviction is based on cogent and consistent evidence which are available on record and the same is fit and proper. Trial court has rightly convicted the appellant. There is no need of interference in the said judgment. The appellant was caught red-handed with the victim girl in a thatched hut. The conviction of the appellant u/s 363 and 366A of the Indian Penal Code is hereby confirmed.

13. 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 1995 and the appellant had faced ordeal of trial since then. The appeal relates to year of 2006. In this case, the appellant remained in jail for about two years.

14. 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
CAV DATE	NA
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