

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.49 of 2007

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Bishnu Deo Viswas @ Bisundeo Bishaw, Son of late Janak Lal Viswas,
resident of village Aamgachhi, P.S. Mahalgaon (Joki Hat), District- Araria.

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha (*Amicus Curiae*)
For the Respondent/s : Mr. Ramchandra Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 30 -04-2024

Heard Mr. Vipul Sinha, learned Amicus Curiae

on behalf of the appellants and Mr. Ramchandra Singh,

learned A.P.P for the State.

2. The present appeal has been filed against

the judgment of conviction dated 21.12.2006 and order

of sentence dated 22.12.2006 passed by learned

Additional District and Sessions Judge, F.T.C-V, Araria,

in connection with Sessions Trial No. 75 of 2006 and

249 of 1987, arising out of G.R. Case No. 315 of 1986,

whereby and whereunder the appellant was found guilty

and convicted for the offence punishable under Sections

366 of Indian Penal Code and he was sentenced to



undergo rigorous imprisonment for a period of seven years and fine of Rs. 5,000/- and in default of payment of fine he has been further sentence to undergo simple imprisonment for one month.

3. Notably, co-accused Krishnalal @ Krishnanand Bishwas was acquitted.

4. According to prosecution case the victim girl, namely, Kumari Hemwati had gone to fetch water from the tubewell of Mukhia, along with her brother Akhilesh, accused Bishnudeo came there, caught hold her, pressed her mouth and forcibly took her inside his house. Further the prosecution case is that when the informant received the information, he came to the house of accused along with several villagers but accused did not agree to release the girl/victim. Rather he threatened them to use his gun, if they would not leave the place.

5. On the basis of the aforesaid *fardbeyan* of the informant, case was registered against the accused



persons under Sections 366, 342 of Indian Penal Code.

6. After completion of the investigation, charge-sheet was submitted against the appellant and others and thereafter cognizance has been taken. Thereafter, the case was committed to the Court of Sessions for trial.

7. Trial court has explained the charge to to the appellant and others to which they pleaded not guilty and claimed to be tried.

8. The point of consideration in this appeal is whether the prosecution is able to prove the charge beyond reasonable doubt or not.

9. To substantiate the charge levelled against the accused person, altogether sixteen witnesses were examined on behalf of the prosecution.

10. P.W.-1 Yogender Bishwas has deposed that while he was at his house, he heard hulla and due to this he came to the door of Krishnalal Bishwas. Thereafter he got information about the alleged



occurrence. He has also deposed that he had also deposed in case No. 521C of 1977 filed by his brother Nand Mohan Bishwas in which appellant and his family members were accused.

11. P.W.-2 Dewender Bishwas is the brother-in-law of victim. he has deposed that while he was at his house, he heard hulla and due to this he came to the house of Rajender Bishwas and then to the house of Bishundeo Bishwas. Many persons were already assembled there. Rajender Bishwas narrated the whole incidence to him. He has supported the prosecution case.

12. P.W. 3 Gayanand Bishwas has deposed that on hearing hulla, he went to the house of Krishnalal Bishwas where he saw that victim was weeping at the house of accused persons. Rajender Bishwas has narrated the incidence to him.

13. P.W. 4 Rajenderlal Bishwas has deposed that on hearing hulla he came to the door of vishnudeo Bishwas, where other persons were already present.



Rajender Bishwas (informant) narrated him about the alleged occurrence.

14. P.W. 5 Devilal Thakur is a hearsay witness.

15. P.W. 6 Girender Bishwas while he was at his house, he heard hulla and due to this he came to the house of Rajender Bishwas and then to the house of Bishundeo Bishwas. Many persons were already assembled there. Rajender Bishwas narrated the whole incidence to him.

16. P.W. 7 Bhuneshwar Bishwas while he was at his house, he heard hulla and due to this he came to the house of Rajender Bishwas and then to the house of Bishundeo Bishwas. Many persons were already assembled there. Rajender Bishwas narrated the whole incidence to him.

17. P.W. 8 Akhilesh Kumar Bishwas is the eye witness and brother of the victim. He has deposed that he along with his sister/victim girl, namely had gone to



fetch water from the tubewell of Mukhia, Krishnalal Bishwas. His sister was holding bucket and lantern in her hands. In the meantime, accused Bishnudeo came there, caught hold her sister, pressed her mouth and gave the bucket to him and forcibly took her inside his house. He further deposed that he came running and narrated the whole incidence to his father and other persons. They came at the house of Krishnalal Bishwas, and heard the sound of weeping of the victim. He said that he would marry the victim to Bishundeoo Bishwas.

18. P.W. 9 Abhyanand Bishwas has deposed that while he was at his house, he saw the victim and Akhilesh Kumar Bishwas were going towards the house of Mukhiya Krishnalal Bishwas holding bucket and lantern to fetch water. He further deposed that Akhilesh came crying. When he asked about the matter, Akhilesh narrated the whole incident to him. They came at the house of Krishnalal Bishwas, and heard the sound of weeping of the victim. He said that he would marry the



victim to Bishundeo Bishwas.

19. P.W. 10 Kumari Hemwati is the victim. She has deposed that while she had gone to fetch water from handpump of vishnudev Vishwas with Akhilesh (P.W. 8), Vishnudev came there, snatched bucket from her hand, handed it to Akhilesh, pressed her mouth and forcibly took her inside his house. On hulla of Akhilesh, her father, brother and several villagers reached at the house of Vishnudev. She was making alarm inside the house but accused Krishnalal Vishwas told the villagers that he would get Hemwati married with accused Vishnudev Vishwas. Vishnudev Vishwas also took out his gun and started threatening the villagers. She has further stated that accused Krishnalal Vishwas and Vishnudev Vishwas both took her to the house of one Tirthanand Vishwas forcibly, detained her there. After some days, she was brought to Araria. In her examination-in-chief, she further deposed that after some days, she was brought to Araria and her L.T.I. was



taken on 4-5 plain papers. She was again taken to village Begna and accused persons asked her to marry Vishnudev. After that she was taken to Jokihat Police Station. She made her statement before the Court u/s 164 of Cr.P.C. that due to fear of accused persons. They have threatened her to kill. The police took her to doctor where she was examined. Her father came at Jokihat police station from where she came back to her house. She has deposed in her examination-in-chief that due to fear she has stated in the court in favour of accused/appellant. Vide para 5 in her deposition she has made statement at Araria and thereafter, she went to Police Station and the police was along with her at the time of recording the statement u/s 164 of Cr.P.C. She stated that she did not not remember whether she gave statement before Court or not that on Sunday at about 6:30 P.M., her brother Rajendra Vishwas has seen her talking with Vishnudev and he assaulted her and scolded and assaulted the co-accused Krishna Lal. Thereafter,



she hide herself at the house of Mukhiya (appellant).

20. P.W. 11 Rajender Bishwas is the informant of this case. He has deposed that while her sister had gone to fetch water from handpump of vishnudev Vishwas with Akhilesh (P.W. 8), Vishnudev came there, snatched bucket from her hand, handed it to Akhilesh, pressed her mouth and forcibly took her inside his house. When Akhilesh came there crying and narrated the whole incident to him, he along with his brother and several villagers reached at the house of Vishnudev. They heard the sound of Kumari Hemawati/victim. Krishnalal Vishwas told the villagers that he would get Hemwati married with accused Vishnudev Vishwas. Vishnudev Vishwas also took out his gun and started threatening the villagers.

21. P.W. 12 Dr. Husna Ara is the doctor who has examined the victim Kumari Hemawati. She has not found any mark of external or internal injury over the body of victim. Doctor has opined the her age



approximately as 17 to 18 years.

22. P.W. 13 Sivanand Sah is a hearsay witness who has deposed that while he was at his house, upon hearing hulla at the door of Bishnudeo Bishwas, he went there. He got to know about the alleged occurrence after inquiring from co-villagers and Akhilesh Bishwas.

23. P.W. 14 Singheshwar Bishwas is the husband of victim girl and he has supported the prosecution case.

24. P.W. 15 Nago Devi is the mother of victim girl and she has narrated about the prosecution case and she got to know about the alleged occurrence by Akhilesh Kumar

25.P.W. 16 Dinesh Ram is a formal witness who has proved the formal F.I.R. (Ext. 3).

26. One Court witness, C.W. 1, Jai Narayan Lal Das has been examined who has proved production-cum-Seizure list and a notice issued by o/c Mahalgam Police Station and sign by Abhyanand Bishwas which



have been marked as Ext. 4, 4/1 and 5 respectively.

27. Two defence witnesses have been examined,
D.W. 1 Mohanlal Thakur and D.W. 2 Maninder Narayan.

28. Learned *Amicus Curiae*, appearing on behalf of the appellants has raised manifold contention and submitted that the prosecution witnesses are highly interested persons and have hopelessly contradicted on material points. The trial Court has failed to appreciate that no independent witness has been examined in the case. The appellant was implicated in this case on account of enmity and land dispute between the parties. The main contention raised on behalf of the appellant is that the statement of Hemwati Kumari (Victim) was recorded u/s 164 Cr.P.C., before Judicial Magistrate on 21.02.1986, in which she has specifically said that she fled away from her house voluntarily as she was assaulted by her father and brother. She was in village Begna at the house of her Bhabhi for 12-13 days and



she had told to Tirthanad Viswas (Brother of her Bhabhi) that she had fled away from her house and came here. The victim Hemwati Kumari (P.W. 10) had not alleged a word against the appellant in the statement recorded u/s 164 of Cr.P.C. Other contention has been raised that it give fatal blow to prosecution case due to non examination of the Investigating Officer. Due to non examination of the I.O., the prejudice has been caused to the defence because the accused/appellants have been deprived of his valuable rights to weigh the credibility of the witnesses in respect of contradictions elicited in the prosecution evidence.

29. *In contra*, learned A.P.P. on behalf of the State submitted that the judgment of conviction and order of sentence is based on consistent and cogent evidence. There is no need for interference.

30. I have gone through the entire prosecution oral and documentary evidence and rival submission made on behalf of the Amicus Curiae,



appearing on behalf of the appellant as well as A.P.P.

From the evidence on record it appears that P.W. 8 and P.W. 10 are the eye witness of the occurrence and as alleged forcibly taking away the girl by the accused Vishnudev Vishwas. P.W. 8 is the brother of victim girl who was accompanying her at the time of alleged occurrence and P.W. 10 is the victim girl herself. Other remaining witnesses who have been examined in this case on behalf of prosecution are not the eye witness of the alleged occurrence rather they have stated in their evidence that when the boy returned to his house, he raised alarm then the informant and other villagers reached at the house of accused and they asked the accused to release the girl but he did not become agree. Other witnesses have stated that they heard the sound of weeping of the victim girl from inside the house of accused Vishnudev Vishwas. From perusal of the evidence of doctor (P.W. 12), it is apparent that he has opined the age of the victim girl was within 17 to 18



years at the time of alleged occurrence. In this respect, victim is at the verge of attaining majority at the time of occurrence. This fact came on record from the evidence of victim (P.W. 10) that she went at the house of accused/appellant when she was scolded by her brother. She lived at the house of appellant. From perusal of the prosecution case and evidence of victim (P.W. 10), this fact is apparent that the victim was taken by the accused Krishnalal for recording the statement u/s 164 of Cr.P.C. and he also taken her to police station but victim has not raised any objection and complaint against the accused in respect of her abduction or kidnapping by the accused persons. She has not raised any alarm against the accused. The residence of victim as well as accused persons belong to same vicinity and both lived nearby. Hence, there is doubt in the prosecution case in respect of abduction or taken away the victim forcefully by the accused/appellant. I find much force in the submission on behalf of the appellant



that victim girl, Kumari Hemwati was major at the time of the alleged occurrence and she herself stated her age 18 years at the time of making the statement u/s 164 of Cr.P.C. in the Court of Judicial Magistrate, Araria on 21.02.1986. She was also found aged about 17 to 18 years by the Doctor (P.W. 12), who examine her on 21.02.1986. Date of occurrence belongs to 09.02.1986, at about 6:30 PM but case has been lodged after six days of the alleged occurrence. So, it is fact that the F.I.R. has been lodged after ill-full thought with malice intention. In this case, the house of the victim and accused belongs to same vicinity and according to prosecution case, the victim was kept in his house by the accused/appellant. So, the informant should have lodged F.I.R. or gave information to Police just after the occurrence but the F.I.R. was lodged on 15.2.1986 after inordinate delay of 6 days of the occurrence. So, I am of this view that the case has been registered after illful thought and malice intention by the informant. In this



case, P.W. 8 is the brother of the victim gave information to his father and other members of the family as well as villagers just after the occurrence but the delay in lodging the F.I.R. raised some doubt in respect of manner and time of the alleged occurrence. In this case, the victim was produced suo-motto before the Police by co-accused Krishnalal. The victim girl was not recovered from the conscious possession and house of the appellant. This case has been lodged against the appellant after illful thought as from the evidence of D.W. 1 and D.W.2, it is apparent that informant and accused persons have inimical and litigating terms. It has been submitted on behalf of the defence that attention of the witnesses has been drawn with regard to the statement made before the police but due to non examination of I.O., those statement could not be brought on the record and this gives serious prejudice to the accused persons. In this case, the victim was produced before police and under protection of police,



the victim stated her statement u/s 164 of Cr.P.C. in respect of the alleged occurrence. In her statement she had not made complaint in respect of her abduction by the accused/appellant and it is admitted fact that co-accused Krishnalal has produced the victim before the police but she has not raised any complaint and alarm against the accused, before the police.

31. In respect of statement u/s 164 of Cr.P.C. and statement u/s 161 of Cr.P.C. made by the victim before Judicial Magistrate and Police respectively. Attention of the witnesses has been drawn with regard to the statement of the victim u/s 161 as well as u/s 164 of Cr.P.C. The evidence of I.O. was important to contradict and corroborate the statement or evidence made by the victim and other witnesses. So, due to non examination of I.O., those statement could not be brought on record and this caused serious prejudice to the accused persons. It is primary right of the defence to draw the attention from the I.O. with regard to the



statement made before the police. The defence abstained from this right. From perusal of the evidence of the witnesses in this case, I find that many questions have been asked drawing the attention of the witnesses towards their police statements. Important questions have been put to the witnesses. The evidence of I.O. was very important in this case but prosecution failed to produce the I.O. in this case. I find that serious prejudice has been caused to the defence due to non examination of I.O.

32. After considering the entire evidence which are adduced on behalf of the prosecution, I am of this view that the prosecution has failed to prove the charge levelled against the appellant in respect of abduction of the victim and the appellant/accused is entitled to get the benefit of doubt. Hence, the benefit of doubt is given to the appellants/accused.

33. Accordingly, the appellant/accused is hereby acquitted. Judgment of conviction and order of



sentence is fit to be set aside and this appeal is fit to be allowed.

34. Hence, I find and hold the judgment of conviction dated 21.12.2006 and order of sentence dated 22.12.2006 passed by learned Additional District and Sessions Judge, F.T.C-V, Araria in connection with in connection with Sessions Trial No. 75 of 2006 and 249 of 1987, arising out of G.R. Case No. 315 of 1986 is set aside.

35. The appellant is hereby acquitted from the charge after giving the benefits of doubt.

36. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

37. Accordingly, the appeal stands allowed.

38. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/ accused. I put on record the words of appreciation for able assistance rendered by him 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 Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
CAV DATE	23-04-2024
Uploading Date	30-04-2024
Transmission Date	30-04-2024

