

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.463 of 2024

Arising Out of PS. Case No.-340 Year-2021 Thana- GOVINDGANJ District- East
Champaran

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Monu Kumar @Manu Kumar SON OF PARMESHWAR SAH VILLAGE -
BAHUARA, PS- KALYANPUR, DIST- EAST CHAPARAN

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajesh Kumar, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-11-2024

1. Heard Mr. Rajesh Kumar, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.
2. The appellant has been convicted for the offences under Sections 363, 366 and 366(A) of the Indian Penal Code and Section 4(2) of the POCSO Act, 2012 by judgment dated 07.07.2023 passed by the learned Additional Sessions Judge -6th -cum-Special Judge, POCSO Act, Motihari,



East Champaran in connection with P. Trial No. 14/2022, CIS No. 264/21 arising out of Govindganj P.S. Case No. 340/2021. By order dated 20.07.2023, he has been sentenced to undergo R.I. for seven years, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for ten days for the offence under Sections 363 IPC; R.I. for ten years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for ten days for the offence under Section 366 IPC; R.I. for ten years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for ten days for the offence under Section 366 (A) IPC and ; R.I for twenty years along with a fine of Rs. 10,000/- and in default of payment of fine, to suffer S.I. for ten days for the offence under Section 4 (2) of the POCSO Act, 2012. The sentences, however, were directed to run



concurrently.

3. The grandmother of the victim (PW4) had lodged her written report addressed to the Officer-in-Charge of Govindganj Police Station in the district of East Champaran, Motihari on 01.11.2021 that her granddaughter who had been residing with her was kidnapped on 30.10.2021 by the appellant and four others. Her granddaughter was in possession of a mobile telephone bearing number 9771921958. The accused persons, all this while had been calling her from different telephone numbers, intimating her that they have kidnapped her granddaughter. Similar telephone calls had come to the mother of the victim as well.

4. On the basis of the afore-noted written report, a case vide Govindganj P.S. Case No. 340/2021 dated 01.11.2021 was registered for investigation under Section 363, 365, 366(A) and 34 of the Indian Penal Code and Section 8 of the



POCSO Act, 2012.

5. The police sent up only the appellant for trial.
6. The Trial Court after having examined seven witnesses on behalf of the prosecution convicted and sentenced the appellant as aforesaid and also granted compensation to the victim.
7. The grandmother (PW4) supported the prosecution case at the trial in as much as she asserted that her granddaughter was kidnapped after she had gone to attend a Shradh feast in her neighbourhood. She also spoke about the telephone calls of accused persons, masquerading themselves, from different telephone numbers. She was not in a position to state about any particular telephone number from which such calls had come. After about two hours of her coming to know about the kidnapping, she had called the parents of the victim. Later, on the next day, the written report was filed. According to PW4, the



victim was recovered after nine days. She was not even aware as to who had drafted the written report on which the subject case was registered.

8. The victim claims herself to be fourteen years old. The Trial Court assessed her capabilities of making cogent statement at the trial and on being satisfied, recorded her statement. While narrating the incident before the Trial Court, the victim frequently burst into tears. According to her, appellant and others kidnapped her from Sikatia and brought her to Raniganj where she was kept in a friend's house whose name she could not know. All the accused persons, five in number, are said to have raped her. One person, namely, the appellant wanted to marry her. Thereafter, the victim alleged the appellant and two women accompanied her to Punjab where she was confined in a room. For the period that she was in confinement, the appellant used to sedate her by giving some injection to her.



When she regained her consciousness on one day, she found Punjab Police at that place. The appellant had asked her to hide herself but she had refused. The appellant, thereafter, fled away and she was brought to the police station. Her father had come along with the Bihar Police to take her back.

9. Later, the appellant also was arrested.
10. In her cross-examination, she has stated that for the fear of being apprehended by the police, the appellant tried to marry her. Instead of putting vermilion on her forehead, he applied lipstick.
11. She has denied the suggestion that nothing of this kind had ever happened and that after coming back from Punjab where she had gone of her own volition, she supported the prosecution case on the asking of her family members.
12. The mother of the victim has been examined



as PW3. She had no idea about the occurrence. She was only made to know about it from her own mother (PW4). However, she asserted that according to her information, the victim was recovered at the instance of Punjab Police. When she had met her daughter (victim), she had also narrated her woes and had said that she was subjected to rape by all the accused persons. According to her, the victim had also made a written report before the Punjab Police whereafter her statement was recorded there only.

13. To this extent, case of the prosecution is consistent that the victim was kidnapped from her neighbourhood in Sikatia and brought to Raniganj and then to Punjab.

14. However unfortunately, there is nothing on record to indicate as to from where was the victim recovered. The Investigating Officer of this case has not been examined. No person from Punjab Police



has been brought to witness stand. There is nothing on record as such to lend credence to this story of the Bihar Police having travelled to Punjab on the complaint of the grandmother of the victim, where with the help of Punjab Police, she was recovered.

15. On the contrary, we find that one Dr. Rashmee Shree (PW-7), one of the members of the medical team, who had examined the victim did not find any sign of any external injury. However, the hymen was not found to be intact. There is no observation about rupture of hymen being in near past. Before her, the victim had narrated her story. She had told her that she resided with her grandmother and that she had left her home along with the appellant on 30.10.2021 for Punjab. She got married at Punjab on 31.10.2021 with the appellant and came back on 10.11.2021. PW-7 asserted that this statement



was made by the victim voluntarily.

16. We have also found from the records that the statement of the victim under Section 164 Cr.P.C. is also not the same what she had to say before the trial court.

17. With no police personnel having been brought to the witness-stand and there being nothing on record to know as to when and from where the appellant was arrested, this Court has no material to confirm the veracity of the accusation made against the appellant.

18. True it is that a statement before a Doctor is not treated as evidence but considering the PW-7, who was one of the Doctors who had examined the victim had heard her say that she had gone to Punjab of her own volition, it would be difficult to completely ignore such part of her statement especially in the background of there being no material except for the solitary statement of the



victim that she was kidnapped by five persons, all of whom committed rape with her and the appellant wanted to marry her. While narrating about the occurrence before the Trial Court, she explained that when the Punjab Police had arrived at the place where she was kept in confinement, appellant first asked her to conceal herself but later, in order to give it an appearance of a run-away marriage tried to create evidence of putting vermilion on her forehead.

19. All this story remains unconfirmed and uncorroborated at the trial. Without the Trial Court having confirmed the fact as to from where the victim was recovered and when was the appellant arrested, there was no way in which complete reliance could have been placed on the deposition of the victim.

20. Two other villagers, distantly related to the victim, namely, Awadh Kishore Singh and Suresh



Singh (PW-1 and PW-2 respectively) have also not stated anything worthwhile to lend credence to the prosecution version. Both of them were present in the village of the occurrence and heard at the Shradh feast, where the victim had also visited, that the victim had gone traceless. They learnt from the grandmother of the victim that she has been kidnapped.

21. In this background, it is difficult to accept the prosecution version without a demur.
22. The victim allegedly was taken away from her neighbourhood after she had gone to attend a feast where many persons of the villager had gone. This had happened on 30.10.2021 and a day after, the written report was filed. Between this period, PW-4 claims to have received telephone calls with regularity.
23. How was this possible ?
24. It, therefore, appears that the prosecution is



based only on the guesswork. There could be a possibility of the victim being in contact with the appellant, who had gone to Punjab along with him for whatever purpose and then came back. This may not have been acceptable to the family. However, we are at a loss to understand as to why four other persons including the appellant were made accused in this case but during investigation nothing could be collected against anyone of them.

25. As noted above, we also have no idea whether there was any compliance of Section 53 A of the Code of Criminal Procedure.

26. It would thus be absolutely unsafe for us to place complete reliance on what the victim had to say before the Trial Court.

27. Thus, giving benefit of doubt to the appellant, we set aside the judgment and order of conviction.

28. The appellant is acquitted of the charges.

29. The appellant is in jail since 11.11.2021. He



is directed to be released from jail forthwith if not required or wanted in any other case.

30. The appeal stands allowed.
31. Interlocutory application/s, if any, also stands disposed of.
32. Let a copy of this order be communicated to the Superintendent of concerned jail for record and compliance.
33. The records of this appeal be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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