

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.395 of 2006**

=====

ZAFAR IMAM @ MD. ZAFAR IMAM son of Md. Jainul Abdin r/o Village
Ghora Ghat P.S. Sherghati, Distt. Gaya.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Ms. Sarandha Suman (Amicus Curiae)
For the Respondent/s : Mr. Z. Hoda

=====

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT**

Date : 01-04-2024

Heard Ms. Sarandha Suman, learned amicus curiae
appearing for the appellant as well as Mr. Z. Hoda, learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
challenging the judgment of conviction dated 19th day of
May, 2006 and order order of sentence dated 20th day of
May, 2006 passed by learned Additional Sessions Judge
FTC No. IV Gaya in Sessions Trial No. 52/2005 and
190/1999 arising out of Sherghaty P.S. Case No. 141 of
1991, whereby and whereunder appellant has been
convicted for the offence punishable under Section 366A of
the Indian Penal Code. He is sentenced to undergo rigorous
imprisonment for five years and to pay a fine of Rs. 5,000/-



and in case of default of payment of fine amount, further to undergo Rigorous Imprisonment for six months.

3. Informant Md. Jahiruddin, father of the victim girl, gave a complaint petition in the court of learned CJM, Gaya, and the matter was sent to police station u/s 156(3) Cr.P.C. and the same was registered as Sherghati P.S. Case No. 141 of 1991.

4. As per complaint petition, victim girl who is daughter of the complainant was 14 years at the time of occurrence. Recapitulating the prosecution case, in short, is that on 23.07.1991, while the victim girl was sleeping at her house, appellant had kidnapped her at night. On next morning, mother of the victim girl found her missing from the house. A search was made thereafter. On getting information about kidnapping of his daughter, complainant returned to his village for inquiring the matter. It is further stated that after three days, on 26.07.1991 accused Zafar Imam returned to his village with the victim girl/daughter of the complainant. According to informant, victim girl had taken away ornaments of Rs. 35,000/- with her. It is further alleged that instead of sending the victim girl to her house,



all accused persons forcefully confined her to their house. Thereafter, mother of the victim girl approached respectable persons of the village for Panchyati and then her daughter was produced before her. In presence of Puncchs, accused Zafar Imam admitted that he had kidnapped the victim girl with all her ornaments. Panchayati has come to the conclusion with a proposal of marriage of the victim girl with the appellant Zafar Imam and the same was accepted by both the parties. Marriage was scheduled to be held on 4.8.1991 and on that day victim girl expressed her will and accepted the proposal of Nikah with Zafar Imam in presence of Kazi but it was found that at the time of Nikah, accused/appellant had fled away stealthy to avoid marriage in connivance and collusion with other accused persons. Thereafter Puncchs advised the complainant/informant to take legal steps and thereafter father of the victim filed a complaint petition in the court of learned CJM, Gaya on 23.08.1991.

5. After completing the investigation, Investigating Officer has submitted chargesheet against the appellant and others under Sections 120(B), 354, 406 and



366(A) of the Indian penal Code and thereafter cognizance was taken and accused persons were summoned for trial. The case was committed to the court of Sessions for trial and disposal.

6. Charges were framed u/s 120(B), 366/A, 354 and 406 of the Indian Penal Code. Trial court has explained the charges to the accused persons to which they pleaded not guilty and claimed to be tried.

7. To substantiate the charges leveled against the accused persons, altogether eight witness were examined by the prosecution. P.W.-1, Jarina Khatoon (mother of the victim girl), P.W.-2 Brijnandan Prasad (formal witness), P.W.-3 B.C. Yadav (independent witness) P.W.-4 Md. Zahiruddin (informant. Father of the victim girl) , P.W.-5 Nabi Hussain (vo-villager), P.W.-6 Maulana Gulam Gaur (kaaji), P.W.-7 S. Ali (co-villager) P.W.-8 Jahid Hussain (co-villager). Victim girl and Investigating Officer of the were not examined by the prosecution.

8. P.W. 1 Jarina Khatoon is the mother of the victim girl. In her examination-in-chief, she has stated that on the alleged night, her minor daughter was sleeping in



her room but in morning she found her absent. During search, she went to the house of the appellant, who was also absent from his house. She also said that victim girl had taken ornaments worth Rs. 35,000/-. In para-2 of her deposition she said that after three days of the occurrence, she returned back to her house. At the time of occurrence, informant (father of the victim) was at Raurkela and he returned back to the home after 6-7 days of arrival of her missing daughter. A Panchayati was held and marriage of victim girl with accused was decided. In para-10 of her deposition, she stated that process of nikah was going on but in between it came to light that accused has fled away from there to avoid marriage with the victim girl. Thereafter, till two years after the occurrence, they keep waiting for marriage of the victim girl with the accused/appellant and ultimately marriage of the victim girl was performed with another person at Orissa.

9. P.W. 2 Brijnandan prasad is a formal witness, who has proved the writing and signature of formal FIR, marked as Ext.-3.

10. P.W.-3 D.C. Yadav is here-say witness. After



seeing the police, he went to the door of the informant and then he came to know that there is some matter relating to marriage of informant's daughter. He has been declared hostile by the prosecution. His attention was drawn towards his previous statement but he has denied his statement before the police.

11. P.W.-4 is father of the victim girl and the informant of the present case. He has corroborated the prosecution story. He said that the alleged occurrence took place on 23.7.1991. He was at Sambalpur in Orissa at the time of occurrence and he came to know about the occurrence, by his relative on 26.7.1991. After getting the news of kidnapping of his daughter, he came to his village on 27.7.1991. A Panchayati was held in this respect and decision of marriage of victim girl with the accused/appellant was taken place by the Panches. Date for marriage was fixed on 4.8.1991 and his daughter has accepted the Nikah with the accused/appellant but during nikah it came to light that appellant has fled away from there to avoid nikah with the victim girl. Thereafter Panches suggested the informant to take legal action. He has proved



the decision of Panches which is marked as Ext.-2 in this case. He has said that the decision is in the writing of Zahir Hussain and the Panches had made their signature on the same. He has proved the complaint petition filed by him in court, which is marked as Ext.3.

12. P.W.-5 Nabi Hussain is independent witness. He has deposed about the prosecution story. In para 1 of his deposition he has stated that at the time of occurrence, victim was about 15-16 years old and she was at the verge of majority. A Panchayati was held and marriage of victim girl was decided with the appellant. About fifty members were present in Panchayati. A date of marriage was also fixed and on fixed date, victim girl has accepted the nikah but appellant was not available there. He has fled away to avoid marriage.

13. P.W.-6. Maulana Gulam Gaus is kazi. He was not present at the time of occurrence. As per decision of panchayati, he went to the house of the victim girl for Nikah. Victim girl had accepted the nikah with the appellant but appellant had fled away from there to avoid nikah with the victim girl. In his cross-examination, he cannot say the



date of birth of Rijbana. Due to absence of the appellant marriage could not be done and thereafter complaint petition was filed.

14. P.W.-7 Samid Ali has said that accused Zafar had gone outside with Rijbana and they returned back after three days. Panchayati had held and it was decided that both should marry. Girl was between 14-15 years at the time of occurrence. Girl had accepted Nikah but the accused/appellant had fled away from there to avoid marriage and therefore marriage could not be solemnized. In his deposition, he has not said about the date of birth of Rijbana but in para-2 of his cross-examination, he has stated that she was major and her age was marriageable.

15. P.W.-8 Jahid Hussain is co-villager. He has said that accused Zafar took away the victim girl with him. He came to know the entire episode on next day. In para- 3 of his cross-examination, he said that he had not participated in panchayati.

16. Learned counsel appearing on behalf of the appellant has submitted that entire proceeding leading to present appeal conducted by the trial court is without



jurisdiction and trial court has completely failed to appreciate the entire evidence made by the prosecution. Victim girl, who is a material witness was not examined by the prosecution neither her statement was recorded before the judicial magistrate u/s 164 Cr.P.C. Prosecution could not bring her testimony on record. Neither any single witness has stated about the real age of the victim girl nor any documentary proof is brought on record to ascertain her age rather during examination witnesses have stated that at the time of occurrence, victim girl was at the verge of majority and aged about 14-15 years. She was also not medically examined by the doctor to ascertain her age. It is further stated that special messenger, who informed the informant was also not examined. No any witness has seen that petitioner had taken away the victim girl. There is no signature of accused on the panchnama of Panchyati which was held on 4.8.1991. Learned trial court had completely failed to appreciate the entire evidence made by the prosecution during trial by not considering the essential ingredients of section 366A IPC in order to arrive at the finding of conviction. The basic ingredients of 366A IPC



has been totally absent in the instant case inasmuch as there was no inducement as such to rope the petitioner in Section 366A IPC. Investigation Officer of this was also not examined by the prosecution, making the entire case and prosecution story completely weak and as such in absence of the evidence of I.O. , the order passed by learned trial court is bad, illegal and perverse in the eye of law and as such, impugned judgment of conviction and order of sentence is fit to be set aside.

17. Learned APP appearing for the state argued that impugned judgment in question is based on cogent and consistent evidence. From the evidence of P.W. 1 and P.W. 4 it is clear that victim girl was married with some other person at Orissa and due to fear that her examination may disturb her peaceful conjugal live, her evidence was not recorded. In society a married girl always become reluctant to give statement in open court about past events. Thus, due to non-examination of victim girl, no adverse inference can be drawn against the prosecution. The defense failed to discredit the evidence of the prosecution witnesses. He further submitted that the prosecution has been able to prove its case beyond



all reasonable doubts, and therefore, learned trial court has rightly convicted the appellant by relying upon the evidence brought on record by the prosecution during trial. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

18. I have gone through the entire prosecution evidence and exhibits which are available on record. It is evident that P.W.-1 and P.W.- 4 are interested witnesses as they are parents of the victim girl. P.W. 3 is independent witness but turned hostile by the prosecution. Victim girl is a prime and star witness , who might be disclosed all facts in respect of the occurrence, but she was not examined by the prosecution. In respect of her age, no documentary evidence is brought on record but during trial, all the witnesses have stated that she was about 14-15 years and at the verge of majority. It is to be noted that according to Muslim Law a girl becomes major after attaining the age of puberty and hence she was major at the time of occurrence



as per the evidence of the witnesses. Investigating Officer of the case was not examined by the prosecution, whose evidence was vital for determination of the case and also manner of occurrence could not be proved by the prosecution as no any witness, including P.W.-1 and P.W.-4 who are parents of the victim, has seen that the victim girl was taken away by this appellant. In such situation, benefits of doubt goes in favour of the appellant. The learned trial Court's findings lack material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence fit to be set aside.

19. In light of the above discussions and considering the facts, evidence led by prosecution and circumstances of the case as well as the ordeal of trial faced by the appellant since beginning of the case and considering that the prosecution has failed to prove the charges levelled against the convict/appellant beyond reasonable doubts. Due to non-examination of I.O. defense has succeeded to raise the doubt in the prosecution version and the appellant is entitled to get the benefits of doubt. The impugned judgment of conviction and order of sentence is



hereby quashed and set aside.

20. The appellant is acquitted by giving him the benefits of doubt. Since the appellant is on bail, he is discharged from the liabilities of the bail bonds.

21. Accordingly, this appeal is hereby allowed.

22. Ms. Sarandha Suman, learned *Amicus Curiae* was appointed to represent the appellant/convict. 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 Rs. 6,000/- (rupees six thousand only) to Ms. Sarandha Suman.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.4.24
Transmission Date	5.4.24

