

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.178 of 2006

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Sandhya Devi @ Sondha Devi wife of Sri Jyotish Sah, resident of Village-Damaypur, P.S.-Azam Nagar, District-Katihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (SJ) No. 262 of 2006

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Daya Devi, daughter of Bokan Singh, resident of Village-Danaipur, P.S.-Azamnagar, District-Katihar

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 178 of 2006)

For the Appellant/s : Mr. Bhola Prasad, Adv

Mr. Indrajeet Kumar, Adv

For the State : Mr. Syed Ashfaque Ahmad, APP.

(In CRIMINAL APPEAL (SJ) No. 262 of 2006)

For the Appellant/s : Mr. Bhola Prasad, Adv

Mr. Indrajeet Kumar, Adv

For the Respondent/s : Mr. A.M.P Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 26-02-2024

Heard Mr. Bhola Prasad, learned counsel for
the appellants and learned A.P.P for the State.

2. The present appeals have been filed
against the judgment of conviction and order of
sentence dated 01.03.2006 passed by learned



Additional Sessions Judge-I, Katihar in connection with Sessions Trial No. 98 of 2004, arising out of Azam Nagar P.S. Case No. 122 of 2003, whereby and whereunder the appellants were found guilty for the offences punishable under Sections 363, 366(A) of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for a period of four years for the offences punishable under Section 363 I.P.C as well as six years for the offence under Section 366(A) I.P.C. The sentences were directed to run concurrently.

3. The prosecution case as per the F.I.R is that on 28.07.2003 at 6 O' Clock in the evening, while the informant had returned home, he found his daughter namely Madhu Kumari (aged about 14 years) missing. The informant started searching his daughter and during search, he got information from one Lakhpattia Devi, a mango seller that she saw his daughter along with the accused appellants on 28.07.2003 at 6:00 P.M in the evening near Capital



Express train. The informant disclosed this information to other family members and the Up-Mukhiya of the village. Subsequently, on 29.07.2003, the appellants were caught by the villagers and brought before the Up-Mukhiya namely Prafulla Kumar Goswami (P.W. 1). The appellants subsequently confessed their guilt before the villagers and stated that they had handed over Madhu Kumari (daughter of the informant) to accused Gulwa Mandal to sell her. The villagers took the appellants to the house of accused Gulwa Mandal. The villagers subsequently interrogated accused Gulwa Mandal and took all the accused persons to the police station.

4. On the basis of the aforesaid fardbeyan of the informant, Azam Nagar P.S. Case No. 122 of 2003 was registered under Sections 363, 366(A), 370, 120(B) of the Indian Penal Code against the accused persons including the appellants.

5. After completion of the investigation,



charge-sheet was submitted against all the accused persons including the appellants, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

6. During the course of trial, altogether eight witnesses were examined on behalf of the prosecution in order to prove its case.

7. On behalf of the defence one witness was examined.

8. The learned Trial Court, after examining the witnesses has found the appellants guilty and convicted them under Sections 363, 366(A) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of four years for the offence under Section 363 I.P.C as well as six years for the offence under Section 366(A) I.P.C. The sentences were directed to run concurrently.

9. P.W. 1 Prafulla Kumar Goswami is the Up-Mukhiya of the village who has stated in his



examination-in-chief that the informant (P.W. 5) came to his door and narrated about the missing of his daughter. He also told that appellants are involved in the missing of his daughter. The appellants were brought before him who subsequently confessed their guilt and told that they handed over the victim to Gulwa Mandal to sell her. P.W. 1 further stated that he met the victim at Khurial railway station and thereafter took the victim in the village and handed over to the police. The 164 Cr.P.C statement of the victim was subsequently recorded in the Court.

10. P.W 2 Laxmi Kumar Singh is the full brother of appellant Sandhya Devi who has stated in his examination-in-chief that he saw that people had assembled at the house of P.W. 1 and they were surrounding the appellants. The appellants confessed their guilt and stated that they had handed over the victim to Gulwa Mandal to sell her.

11. P.W. 3 Madhuri Kumari is the victim



herself who has stated in her examination-in-chief that appellant Sandhya Devi gave her rice and fish and after eating fish, she started feeling drowsiness. The appellant Sandhya Devi thereafter took her to Katihar by train and appellant Daya Devi met them in way to Khurial railway Station. Accused Sandhya Devi met her to sit with accused Daya Devi and started talking with a black tall man at the railway station. Subsequently, the victim and accused Daya Devi, Sandha Devi boarded at Capital Express. As soon as the train was about to move, accused Sandhya Devi and Daya Devi alighted from the train but the victim could not come down from the train. She started weeping and reached to Katihar. A woman ascended her in train at Katihar. She reached Barsoi in night. She descended from the train. There also a woman again climbed her in morning train heading towards Khurial. She came down at Khurial railway station and saw Prafulla Kumar (P.W.1), who happened to be residing at her villager. P.W. 1



brought her to her home. She narrated the incidence to her father (P.W. 5). The villagers interrogated accused appellants Sandhya Devi and Daya Devi. The victim stated that she knew later on that the black man who met them at Khurial Railway Station was accused Gulwa Mandal. This witness was cross-examined at length but defence could not take out anything in its favour. The victim also stated that she had recorded her statement under Section 164 Cr.P.C before the Court which is similar to the evidence given by her.

12. P.W. 4 Kali Prasad Singh is the Ward Member who has narrated the same story as narrated by P.W. 1 and P.W. 2. He has put his signature on the seizure list.

13. P.W. 5 Lakhan Goswami is the informant of the case who has stated in his examination-in-chief that during search next date to the incident, Lakhpatia Devi revealed him at Khurial railway station that she saw a girl along with appellants/accused Sandhya Devi



and Daya Devi. The informant informed about this information to Up-Mukhiya Prafulla Kumar Goswami (P.W. 1) who convened a *Panchayati* and called the appellants/accused Sandhya Devi and Daya Devi. The appellants subsequently confessed their guilt and stated that they have given Madhu Devi (victim) to accused Gulwa Mandal for the purpose of selling her. Accused Gulwa Mandal was also interrogated who has stated that victim Madhu Kumari was being sent to Punjab for sale. Subsequently, the victim (P.W. 3) came home along with P.W. 1 from Khurial railway Station and the Police was informed.

14. P.W. 6 Bijay Kumar Singh and P.W. 7 Sarkar Singh are the witnesses who have stated in their deposition that they had heard about the incidence from other persons that accused appellants have kidnapped the daughter of the informant to sell her.

15. Mr. Bhola Prasad, learned counsel



appearing on behalf of the appellants, in defence of the appellants has submitted it is the case of the informant that the appellants have kidnapped the victim girl but except statement of the victim and the informant as well, no independent witness has come forward to claim to be the eye witness to the occurrence. Though the victim in her evidence has claimed the involvement of the appellants but she had not stated any forceful act against her by the appellants. Though, the victim girl has stated that she of her own goodwill went with the appellants. The allegation of the victim that appellants have given some intoxicating substance in her meal was not substantiated by any medical evidence. The victim girl has also not alleged any sexual assault against any accused person. The learned Trial Court has also not appreciated the facts that several witnesses have stated in their deposition that five to seven hundred people forcibly surrounded the appellants and out of fear, the appellants might have



confessed their guilt. The prosecution has failed to examine the Investigating Officer of the case and also Lakhpatia Devi who manifested first time to the informant Lakhan Goswami (P.W. 5) that she saw a girl with accused appellants Sandhya Devi and Daya Devi on the alleged time and date as mentioned in the F.I.R.

16. Learned counsel for the appellants has further contended that appellants had been arrested on 29.07.2003 and they remained in custody for more than two years.

17. Considering the rival submissions of the parties, the learned Trial Court was of the view that the statement of the victim under Section 164 Cr.P.C is completely corroborating with the evidence delivered by her in Court. The appellants confessed their guilt before the *panchayat* convened by the P.W. 1 Up-Mukhiya of the village and this fact finds support by the evidence of P.Ws, 1, 2, 4, 5, 6 and P.W. 7. It also finds strength from the evidence of P.W. 8 that P.W. 8 sold two Kg



rice to accused appellant Sandhya Devi which was given to the victim and after eating rice, she started feeling intoxication, but did not sleep. The appellant Sandhya Devi, taking the benefit of the situation, seduced the victim for a pleasure journey to Katihar. The appellant Daya Devi also accompanied them. Both mounted along with the victim on train but came down at the nick of time. The victim, saw them talking with a black tall man there. However, the weeping of victim in train foiled the plan of accused persons and she returned home. The victim named the accused persons involved in the incidence of her kidnapping. The evidence on record shows that the appellants took away the victim Madhu Kumari (P.W. 3), aged about 13-14 years from lawful guardianship of her parents and thus, the offence under Section 363 of the Indian Penal Code is complete. The record shows that prosecution has proved its case against accused persons under Section 363 of the I.P.C beyond all



reasonable doubts by positive evidence. Now on the point of Section 366(A) of the Indian Penal Code, learned Trial Court had rightly observed that the accused appellants had induced the victim girl to travel to Katihar for pleasure trip and the girl moved accordingly which is sufficient inducement of the offence under Section 366(A) of the Indian Penal Code. The learned Trial Court thereafter found the appellants guilty for the offences punishable under Sections 363, 366(A) of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for a period of four years for the offences punishable under Section 363 I.P.C as well as six years for the offence under Section 366(A) I.P.C.

18. This Court does not find any infirmity in the order impugned. No fault could be found with the judgment of the trial court in convicting the appellants under Sections 363, 366(A) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment



for a period of four years for the offences punishable under Section 363 I.P.C as well as six years for the offence under Section 366(A) I.P.C. The conviction of the appellants under Sections 363, 366(A) of the Indian Penal Code, is, therefore sustained and upheld.

19. However, keeping into account the nature of accusation, the circumstances under which the case was lodged, the age of the appellants and the prosecutrix and other factors, this Court is of the view that ends of justice would be sufficiently met, if the sentences imposed upon the appellants are modified and reduced to the period which the appellants have already undergone in custody.

20. The sentences imposed upon the appellants are therefore modified and reduced to the extent of the period already undergone by them in custody.

21. Accordingly, the appeal stands dismissed with the modification in the sentences as discussed



above.

22. Since the appellants are all along on bail, they are discharged from the liabilities of the bail bonds.

(Sunil Kumar Panwar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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