

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.756 of 2022

Arising Out of PS. Case No.-31 Year-2017 Thana- SIWAIPATTI District- Muzaffarpur

Mukesh Kumar, Son of Sri Fudeni Ray, R/o Village-Gosaipur, P.O.-Harser,
P.S.-Siwaipatti, Distt.-Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 716 of 2022

Arising Out of PS. Case No.-31 Year-2017 Thana- SIWAIPATTI District- Muzaffarpur

Fudeni Ray, S/o Late Ram Autar Ray, R/o Village-Gosaipur, P.O.-Harser, P.S.-
Siwaipatti, Distt.-Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In both the Appeals)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 716 of 2022)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.

For the Respondent/s : Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-11-2024

The afore-captioned two appeals have been
heard together and are being disposed off by this



common judgment.

2. Heard the learned counsel for the parties.

3. The appellants, viz., Mukesh Kumar [*Cr. Appeal (DB) No. 756 of 2022*] and Fudeni Ray [*Cr. Appeal (DB) No. 716 of 2022*] are son and father respectively. Appellant/Mukesh Kumar has been convicted for the offence under Section 366/34 of the Indian Penal Code (*in short the IPC*) and Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act*), whereas appellant/Fudeni Ray has been convicted for the offence under Section 366(A)/34 of the IPC *vide* judgment dated 11.08.2022 passed by the learned Additional Sessions Judge-VI-Cum-Special Court, POCSO Act, Muzaffarpur in POCSO G.R. No. 92-93 of 2019, arising out of Siwaipatti P.S. Case No. 31 of 2017. By order dated 12.08.2022, appellant/Mukesh Kumar has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/- for the offence under Section 4(2) of the POCSO Act and to



undergo R.I. for ten years and to pay a fine of Rs. 5,000/- for the offence under Section 366/34 of the IPC. By the same order, appellant/Fudeni Ray has been sentenced to undergo R.I. for ten years and to pay a fine of Rs. 5,000/- for the offence under Section 366(A)/34 of the IPC. In the event of non-payment of fine, appellant/Fudeni Ray has been sentenced to undergo S.I. for a further period of six months, whereas in the event of non-payment of fine by appellant/Mukesh Kumar, it was directed that the same has been recovered by his property.

4. In this case, it appears that the trial proceeded before the Sessions Court but then, later, on realization that this case has to be tried by the Special Court, POCSO Act, the case records were transferred to the Special Court, POCSO Act. As such, there are two sets of evidences available on record. We have referred to the evidence recorded by the Special Court for the needful.



5. The victim, a fourteen years old girl, is said to have become traceless from 08:30 A.M of 08.04.2017.

6. According to the father of the victim (P.W. 1), who has lodged the FIR, the victim had gone for coaching at 6 O'clock in the morning and she never returned. It was alleged by him that the appellants, assisted by their other family members, abducted her.

7. With respect to such abduction, a case *vide* Siwaipatti P.S. Case No. 31 of 2017 was lodged after four days of the victim going traceless on 12.04.2017 for the offence under Section 366(A)/34 of the IPC.

8. However, the police, after investigation, submitted *charge-sheet* only against the appellants who faced trial.

9. Seven witnesses were examined on behalf of the prosecution who in some way or the other tried to support the prosecution case except for P.W. 4, who has become hostile.

10. There are a couple of very interesting



features of this case, which need to be noticed in the first instance.

11. The FIR was lodged after four days of the victim having gone traceless. The informant (P.W. 1) has not recorded the source of information for him to allege that the appellants assisted by their other family members abducted her. We have noticed this for a reason.

12. The victim appears to have been recovered after about five months of her captivity with the appellant/Mukesh Kumar. She gave her statement under Section 164 Cr.P.C. on 04.09.2017 in which she was asked by the learned Magistrate as to what she had to say about Siwaipatti P.S. Case No. 31 of 2017 lodged by her father. She explained that on 08.04.2017, while she was going to attend her coaching classes, the appellant/Mukesh Kumar along with Rajesh, Subhash and Surendra Rai met her. She was lured by Rani and her aunt also and was made to walk on the road where she



had met the afore-noted person. Then she was made to sit in a Scorpio vehicle on the point of pistol. She also claims to have been gagged. She was taken to a place called *Kotwa*, the details of which she did not know. She claims to have met the father of appellant/Mukesh Kumar, viz., appellant/Fudeni Rai as also the brothers of appellant/Mukesh. Then she was made to board a train to Delhi. She along with the appellant/Mukesh came to Delhi. She then claims to have called her mother by borrowing the telephone from a woman residing nearby. Her mother along with the personnel of the Administration came and got her released on 19.08.2017. She claims to have remained at Delhi along with the appellant/Mukesh Kumar for four months.

13. Very surprisingly and which is not the usual practice of any Magistrate recording such statement under Section 164 Cr.P.C., she was asked as to the probable reason for the appellants to have abducted her. She disclosed that her father and the appellant/Mukesh



are contestants for the post of *Mukhiya* and are, therefore, opposed to each other. It is because of that enmity that she was abducted.

14. On being further questioned or perhaps led by the learned Magistrate, she disclosed that the appellant/Mukesh married her and also had sexual relation with her. Now she wanted to stay with her parents.

15. This very statement of the victim regarding the circumstance under which she was abducted; her captivity for four months and her being released with the help of administration in presence of her mother from Delhi, appears to be very doubtful. If all this were true, the case would have been lodged perhaps on 19.08.2017 only or immediately after their returning from Delhi.

16. A bare reading of the 164 Cr.P.C. statement of the victim would indicate that such recovery was made at Delhi and not any where else.



17. We have found this statement of the victim under Section 164 Cr.P.C. to be factually incorrect from the deposition of Prabhu Narayan Sah (P.W. 7), the Investigator of this case. He has stated before the Trial Court that he had recovered the victim from her own village at *Gosaipur* by the side of a road. And after she was recovered, her statement under Section 161 Cr.P.C. was recorded. In fact, the Investigator was told by the Officer-in-Charge of the concerned Police Station that the victim was standing on the village road. It was only thereafter that her statement was recorded under Section 164 Cr.P.C. This signifies that there is a purpose behind lodging the case against the appellants which, perhaps, was elicited from the victim unwittingly by the learned Magistrate recording her statement.

18. A look at the deposition of P.W. 1, her father, would further reveal that an absolutely false story has been put up against the appellants. We say so for the reason that P.W. 1 deposed before the Trial Court that



the victim was recovered after four to five months of her going traceless. The victim had not been recovered in his presence. He has not disclosed about his wife (mother of the victim) having informed the administration and gone to Delhi to get her recovered. The house of the appellants is located around fifty yards away from his house. It was only at the instance of the police that P.W. 1 came to learn that the victim has been recovered. Knowing that information from the police also, he did not care to go to the Police Station. He did not even make an attempt to meet his daughter after her so-called recovery. He also learnt from the police that after the statement of the victim was recorded, she was sent to a short-stay home for women.

19. If this does not reflect a completely cock and bull story by the prosecution, then, perhaps, there would be nothing which could be called false and baseless.

20. The efforts undertaken by the prosecution



to prove its case by bringing Laxmilal Rai (P.W. 2) and Vijay Kumar Yadav (P.W. 3) clearly indicate that the police also went along with an absolutely non-veridical version of the prosecution.

21. Laxmilal Rai (P.W. 2) is the brother-in-law of P.W. 1, *i.e.*, he stands in the relation of maternal uncle to the victim. He claims to have heard in his village that the appellant had run away with the victim.

22. Vijay Kumar Yadav (P.W. 3) claims that on the day when the victim was kidnapped, he was present at a tea-stall with around five to seven persons. He saw the victim returning from her coaching class on her cycle. Before her, a *Bolero* vehicle also passed by, in which the appellants and their family members were sitting. He saw them dragging in the victim in the afore-noted vehicle. Thereafter, P.W. 3 started looking for the victim. He did not seem to have any idea as to what happened in the case later. With respect to his relationship with the victim, he has disclosed that her



father was his maternal uncle.

23. By any stretch of imagination, the version of P.Ws. 2 and 3 cannot be accepted as true version of the occurrence, which is apparent from the different versions put up by the victim, her mother and father.

24. Ram Pravesh Rai (P.W. 4), as we have already noted, has turned hostile. Umashankar Rai (P.W. 5) also claims to have seen the victim being taken away.

25. We disbelieve P.Ws. 4 and 5 entirely for the reason that if they had seen the victim being taken away in a *Bolero* vehicle, there was no reason why the FIR would have been lodged after four days, especially when the appellants and their family members were seen committing the offence.

26. Very surprisingly but as expected, the victim gave a complete go by to what she had to say before the learned Magistrate under Section 164 Cr.P.C. She adopted a completely different line of story-telling. She claims to have been taken to *Kotwa* Station and from



there to Delhi where she was kept for four months. She was subjected to rape by four persons on the point of weapon. She was forced to marry the appellant/Mukesh Kumar. She, ultimately, succumbed and married the appellant/Mukesh Kumar. After about four months, the appellant/Mukesh Kumar became ill. For this reason, he brought her to *Hajipur*. She picked up the mobile telephone of the appellant/Mukesh Kumar at *Hajipur* and called her parents. Thereafter, her parents, with the District Administration came and got her recovered, whereafter her statement was recorded.

27. Do we need to see anything further as to what she had stated before the Trial Court?

28. On the day when the victim deposed before the Trial Court, she had already become eighteen years of age. During all these four months, she was kept in the house of a relative of the appellants where she did not disclose about her forcible marriage with Mukesh Kumar after her abduction.



29. The parents of the victim, she was very specific, had brought her from *Hajipur* to Police Station.

30. This is not the prosecution case.

31. At the time of the occurrence, the victim was only fourteen years of age. For the reason of this being a false case, it appears that no effort was made to actually find out the age of the victim. There is but, on record, a school leaving certificate disclosing the date of birth of the victim being 01.01.2003. The document appears to be of apocryphal origin.

32. Be that as it may, the very substratum on which the case is founded has been found to be incorrect, which opinion is based on the deposition *inter se* of the witnesses.

33. The victim refused to get herself medically examined.

34. In this context, we find that, perhaps, it was a well thought out and well orchestrated move of the father of the victim to get this case lodged against his



own competitor in the *Mukhiya* election. Not even one part of the prosecution story appears to be correct which would inspire any confidence. The victim and her parents, all, have lied to the Court all this while.

35. We find the prosecution case to be absolutely false and unproved.

36. For the reasons discussed above, we give benefit of doubt to the appellants and acquit them of all the charges levelled against them.

37. The judgment and order of conviction and sentence, referred to above, in both the appeals, is set aside.

38. Both the appeals stand allowed and disposed off accordingly.

39. Since appellant/Mukesh Kumar [*Cr. Appeal (DB) No. 756 of 2022*] is in jail, he is directed to be released forthwith, if not detained or wanted in any other case.

40. The appellant/Fudeni Ray [*Cr. Appeal*



(DB) No. 716 of 2022] is on bail. He is discharged of the liabilities of his bail bonds.

41. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

42. The records of these cases be returned to the Trial Court forthwith.

43. Interlocutory application/s, if any, in both the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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