

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.360 of 2013

Arising Out of PS. Case No.-51 Year-2009 Thana- MANIYARI District- Muzaffarpur

Dilip Thakur, Son of Nathuni Thakur, Resident of Village Bishanpur Baghi,
P.S. Maniyari, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anirudh Kumar Sinha, Advocate
	:	Mr. Anil Kumar Singh No. 6, Adovcate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date : 02-12-2024

Heard Mr. Anirudh Kumar Sinha, learned
counsel for the appellant and Ms. Anita Kumari Singh, learned
APP for the State.

2. The present appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of conviction dated 26.04.2013 and order of sentence dated 30.04.2013 passed in Sessions Trial No. 952 of 2009 / 73 of 2012 in connection with Maniyari P.S. Case No. 51 of 2009 passed by learned Additional Sessions Judge-IX, Muzaffarpur, whereby and where-under the appellant has been convicted for the offence punishable under Section 366A of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of



seven years and fine of Rs. 30,000/- and in default of payment of fine he will further undergo rigorous imprisonment for a period of three months and further directed that half of the fine will be paid to the victim as compensation and all sentences shall run concurrently.

3. The brief fact leading to the filing of the present appeal is that on the basis of written statement given by informant Kishandeo Mahto, his daughter aged about 15 years student of Class-X in Baghi High School was going to the school with her younger sister Babita, who is reading in Class-VI at about 7:00 AM on 25.05.2009. The younger sister Babita came at the house weeping and crying and told that as she and her sister reached near Bumbum Gachhi, at that time appellant Dilip Thakur came and forcibly taken away her sister (victim) pressing her mouth, on that information, Informant along with his family members came there but his daughter was not found. Thereafter, he went to the house of Dilip Thakur and asked about the occurrence, from Gangeshwar Thakur, brother of appellant, Nathuni Thakur, father of appellant and Saraswati Devi, mother of appellant but they do not reply satisfactorily and stated that they know nothing about the occurrence. Thereafter, even on hectic search he could not trace his daughter. Thereafter,



he gave information to the police.

4. Further on the basis of written report Maniyari P.S. case no. 51 of 2009 dated 26.05.2009 was registered under Sections 366 and 366A of the Indian Penal Code at about 9.30 AM. On the same day at about 2:00 PM., the victim and appellant were recovered from Balia Chowk situated in Kurhani Police Station. The statement of the victim was taken who told about forcibly taken her away by the appellant and taken her to Hazipur Pathleshwar Ashthan and forcibly put vermilion on her head. Due to fear she could not restrain and they stayed in the night there from where they were coming then police recovered at Balia Chowk and the statement of the appellant was recorded who stated that he had married with her sweet will in the Hazipur Pathleshwar Ashthan. Thereafter, the appellant was arrested. The victim was produced before the S.D.J.M. West, Muzaffarpur and by order of the learned S.D.J.M west, Muzaffarpur the statement of the victim under Section 164 of the Cr.P.C. was recorded in which she stated that on 25.05.2009, when she was going to school then appellant along-with three other persons came and forcibly lift her by vehicle for marriage in a temple where she refused. Thereafter, on the next day, they came at Balia Chowk. He kept her in a Temple and from Balia



chowk where the police had recovered her. She was medically examined by the doctors and her age was assessed 15 to 16 years and after completion of investigation, charge sheet was submitted under Section 366 A of the Indian Penal Code and after cognizance, this case was committed to the court of sessions. Charge was read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

5. The prosecution has examined altogether 11 witnesses to substantiate the charges levelled against the appellant, out of them, PW-1 Bhola Mahto, PW-2 Mishrilal Sah, PW-3 Amarjeet Manjhi, PW-4 Md. Jaheed, PW-5 Kishandeo Mahto (informant), PW 6 Neelam Devi (mother of the victim), PW-7 Babita Kumari (younger sister of the victim), PW-8 Kiran Kumari (victim), PW-9 Guddu Kumar Advocate clerk, (formal witness), PW-10 Subhash Ram, the Investigating Officer of the case, PW-11 Dr. Bipin Kumar (Medical Officer).

6. Out of whom PW-1 Bhola Mahto, PW-2 Mishrilal Sah, PW-3 Amarjeet Manjhi, PW-4 Md. Jaheed have said nothing against the appellant and they have been declared hostile by the prosecution. They also denied the statement under Section 161 of the Cr.P.C.

7. PW-5 Kishandeo Mahto, informant who stated



in his examination-in-chief that on the day of occurrence, his both daughters were going to Baghi at 6:00 AM. then the appellant along with others have forcibly caught her daughter aged about 15-16 years then his younger daughter came and told him about the occurrence but as soon as he reached the place of occurrence, he could not find them. Further he stated that thereafter, he got instituted this case. After that the police recovered her daughter with the appellant and informed him the same then he went to the Police station. Thereafter, statement of his daughter was recorded and daughter was handed over to him and have got the written report written by Bishundeo Mahto, who has also signed as a witness. He further stated that the report was written by Munshi of the police station and he had given his Thumb Impression. In cross-examination he accepted that he had got instituted this case by hearsay information.

8. PW-6 Neelam Devi, mother of victim in her examination-in-chief narrated the same deposition stated by PW-5 and she further stated that after getting the information, she went to the house of the appellant but their family members did not told her the truth. She had also identified the appellant.

9. PW-7 Babita Kumari, younger sister of the victim stated in her examination-in-chief that on the day of the



occurrence she was going to the school with her sister. She further stated that the appellant came with other persons and threatened her and her sister. She further stated that when she returned to her house and told her parents about the occurrence that the appellant has taken away her sister. She further stated that her sister was studying in Class- X and she was studying in class VII.

10. PW-8, the victim stated in her examination-in-chief that she was going to school and her sister was also with her. She further stated that the appellant along-with other persons have taken her away from vehicle of Bumbum Singh and her sister returned back to home. She further stated that she was found by the police from Balia Chowk. Further she was produced before the Magistrate where she gave her statement and she proved her signature on the statement under Section 164 Cr.P.C. as Exhibit-1. She had also identified the appellant.

11. In cross-examination these witnesses PW-5, PW-6, PW-7, and PW-8 (victim) stated that victim herself went to her maternal uncle's house.

12. PW-9 is a formal witness and proved the First Information Report and is in the handwriting of the then Officer-in-charge Naresh Kumar Exhibit- 2.



13. PW-10 is Subash Ram, the Investigating Officer of the case, had stated in his examination-in-chief that on 26.05.2009 he was posted at Maniyari Police station and he received the charge of Maniyari P.S case no. 51 of 2009. Thereafter, he recorded the statement of the informant and proceeded for the place of occurrence and taken the statement of witnesses and made inspection of the place of occurrence and described the place of occurrence. He further stated that the victim was recovered and her statement was recorded under Section 164 of the Cr.P.C on 28.05.2009 and also got the victim examined by the doctor and submitted chargesheet under Section 366A of the Indian Penal Code and also proved the written report in the writing of the then officer-in-charge Sri Naresh Kumar, Exhibit- 3.

14. PW-11 Dr. Bipin Kumar stated that on 18.05.2009 he was posted at S.K.M.C.H. Muzaffarpur in the Department of F.M.T. and examined the victim at 2:30 PM and she was sent for P.S. Maniyari, District-Muzaffarpur on the same day at 1:45 PM having Case No. 51 of 2009 dated 26.05.2009. He further stated that patient was accompanied with *Chowkidar* Jagdish Ram and examined in presence of female attendant Basanti Devi. He further stated that she refused for internal



examination. Her height was 144 cm., weight was 39 kg and having tooth in her oral cavity 7+7 / 8+7. She was advised x-ray A/P and lateral view of both wrist joint and hip joint. After receiving the x-ray plate having no. 7169 of Radiology department of S.K.M.C.H. Muzaffarpur shows:

(1) the incomplete fusion of epiphysis of lower end of radius and ulna of both sides.

(2) Epiphysis of iliac crest appeared on both sides but not fused.

Opinion- From physical dental and radiological finding the age of victim is between 15 to 16 years approximately.

The report was prepared by the doctor in his writing and signature is marked as Exhibit-4. On refusal of internal examination written by the victim herself and she has signed the same which is marked as Exhibit-4/1.

14.(i) In his cross-examination the doctor stated that there is signature of female attendant Basanti Devi on the report which is marked as Exhibit-A and he further stated that there is no need of internal examination for assessing the age of the victim. X-ray plate was not placed before him and he further stated that the age of the victim is between 15 to 16 years and cannot be 14 to 15 or 16 to 17 and he had examined by the



scientific method.

15. After closure of the prosecution evidence, the appellant were examined under Section 313 of the Cr.P.C confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in this case.

16. Learned counsel appearing on behalf of the appellant submitted that the prosecution is not able to prove its case beyond all reasonable doubts. He further submits that the appellant is innocent and they have not committed any offence and the trial Court erred in convicting the appellant for the charges, despite having no material available on record, except for the oral evidence of the prosecution witnesses. He next argued that he has falsely been implicated by the informant in a criminal case. There are vital contradictions in manner of occurrence and cited **2003(3) PCCR 85 Sudhir Yadav and others Vs. State of Bihar** showing the statement of the witnesses



recorded by Magistrate under section 164 of the Cr.P.C. should be proved by the Magistrate and other case law reported in **2005(3) East Criminal Cases 256 Patna** showing no alarm raised by the victim girl during journey time and no material to show that she made any attempt to escape. He further submits that in this circumstance, prosecution case of forcibly kidnapping the victim is not established. He next submits that there is no any independent witness in the case to support the occurrence and all are interested witnesses. He further submitted that the alleged victim on her own sweet will gone to the house of her maternal grandmother, this fact was admitted by the PW-5, PW-6, PW-7 and PW-8 (victim) and all the independent witnesses PW-1, PW-2, PW-3 and PW-4 have been declared hostile. He further submitted that there is a gross contradiction in the statement of prosecution witnesses that at the time of the First Information Report, it had been stated that only the appellant came and taken away the victim later on it was developed that there were other persons. Thus, there is contradiction in the evidence of the remaining witnesses and hence the accused should be acquitted and judgment and sentence of the trial Court is fit to be set aside.

17. On the other hand, learned Additional Public



Prosecutor vehemently opposed the appeal and submits that there is direct allegation against the present appellant, for kidnapping the victim. She further stated that the informant PW- 5 Kishundeo Mahto, PW- 6 Neelam Devi, PW-7 Babita Kumari and PW- 8 Kiran Kumari (victim) have fully supported the occurrence and PW- 10 Subhash Ram, the Investigating Officer also inspected the place of occurrence and found the victim at Balia chowk. She further stated that the occurrence cannot be considered false merely on the basis that some witnesses have been declared hostile. In view of the aforesaid statements and the evidence on record, the learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

18. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and appellant before the Trial Court.

19. On deeply studied and scrutinized all the materials available on record, it is evident to note that during the course of trial, the learned Trial Court convicted the appellant for offence punishable under Section 366A of the Indian Penal Code, but the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and



infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the occurrence and the presence of individuals at the place of occurrence as there are no eye witness to the alleged occurrence. PW-6 being mother of the informant has also not seen the occurrence and in her cross-examination admitted that her daughter later told her that she had gone to the house of maternal grandmother and she is mere hearsay witness, another important witness (PW-7) who is the informant of the case has also not seen the occurrence and on basis of story told by her younger daughter he made the appellant accused in the present case, therefore, he is also a hearsay witness and there are no independent witnesses of the alleged occurrence and all the witnesses presented are interested witnesses, thereby raising doubts regarding the credibility and impartiality of their testimonies. It is crystal clear that PW-5 (informant), PW-6 (mother of the victim), PW-7 Babita Kumari, (younger sister of the victim), PW-8 (victim) has also stated in her cross-examination that the victim had gone voluntarily to the maternal grandmother's house at that day.

20. Further, it appears that there is vital contradiction in manner of occurrence and genesis of the case



which has not been proved by the prosecution as nothing has been recovered or seized by the Investigating Officer from the place of occurrence, and not being marked as an exhibit by the prosecution and the prosecution not presenting any such evidence which proves that the victim was forcibly kidnapped by the appellant on the date of occurrence, is itself important and in its absence it cannot be said that the prosecution has been successful in proving the case against the appellant and out of the eleven prosecution witnesses examined in the case, no prosecution witnesses have supported the prosecution's case, lacking direct corroborative value. Further in the absence of any conclusive evidence or substantive proof as to the cause or manner in which the kidnapping has been done, the claim remains unverified and unsupported by factual basis.

21. Hence, in the present case, it does not appear from the records that the incriminating circumstance under Section 313 of Cr.P.C. was put to the accused person / appellant. Taking into consideration the entire material on record, it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellant. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably



failed to prove the guilt of the accused person/appellant for the charges levelled against him.

22. On perusal of the impugned Judgment of conviction dated 26.04.2013 and order of sentence dated 30.04.2013 passed by the learned Additional Sessions Judge-IX, Muzaffarpur, in Sessions Trial No. 952 of 2009 / 73 of 2012 arising out of Maniyari P.S. Case No. 51 of 2009 against the appellant is set aside and the appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

23. Accordingly, this appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	NA
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