

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4210 of 2019

Arising Out of PS. Case No.-104 Year-2004 Thana- MAKHDUMPUR District- Jehanabad

MUKESH KUMAR Son of Lakhana Mahto Resident of Village- Saidpur, P.S.-
Makhdumpur, Teha, District- Jehanabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nawal Kishore Prasad Mr. Ashok Kumar
For the Respondent/s	:	Mr. Abhay Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 22-10-2024 Heard the learned counsel for the appellant and the
learned Spl. P.P. appearing on behalf of the State.

2. The present appeal has been preferred against the judgment and order dated 19.08.2019 and 21.08.2019 respectively passed by the Presiding Officer, Fast Track Court No. 2, Jehanabad in S.Tr. No. 139 of 2005 / 28 of 2017 arising out of Makhdumpur P.S. Case No. 104 of 2004 by which the appellant has been convicted and sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 2,000/- under Section 366(A) of the Indian Penal Code and in default of payment of fine further to serve under simple imprisonment for two months. However, the period of sentence is to be set off already against the period already undergone by the appellant.

3. The prosecution case in brief is that the informant



Shakuntala Devi had given her *fardbyean* on 11.05.2004 alleging therein that her daughter aged about 15 years was missing since 8 P.M. of 07.05.2004 from her house. Then she had started searching and in course of search, it transpired that her daughter was seen along with co-villager Mukesh Kumar (appellant) aged about 22-23 years. Then, the informant went to the house of Mukesh Kumar, but they were not present there. Thereafter in course of search, she went to village Shikarpur, District-Patna, then she came to know that Mukesh Kumar and her daughter had come there at the house of Bhikhari Mahto but again they had proceeded from there. The informant had claimed that Mukesh Kumar had kidnapped her minor daughter. On the basis of above stated *fardbeyan* of the informant, Makhdumpur P.S. Case No.104/2004 was registered u/s 366 (A) I.P.C. on 11.05.2004 against accused/ appellant Mukesh Kumar. Charge-sheet was submitted u/s 366 (A) and 376 I.P.C. by the police against the appellant.

4. Learned counsel for the appellant, at the very outset, does not challenge the judgment of conviction and he confines his argument to the punishment awarded to him i.e. to undergo rigorous imprisonment for five years.

5. It has been submitted by the learned counsel for the



appellant that the maximum sentence prescribed under the statute is upto 10 yrs. appellant that the minimum sentence for having committed the offence under Section 366(A) of the Indian Penal Code is that the appellant has been sentenced to undergo rigorous imprisonment for five years. He also submits that the appellant is a young man and he has no prior record of conviction and he prays for a lenient view. The petitioner was arrested on 13.05.2004 and he was granted regular bail on 14.07.2005.

6. Learned counsel for the appellant submits that the appellant has altogether undergone a period of 32 months.

7. I have considered the submission of the parties.

8. In the facts of the case, this court does not find any merit to interfere with the conviction of the appellant upheld but the sentence to undergo rigorous imprisonment for 5 years is modified to rigorous imprisonment for 3 years.

9. The petitioner is directed to undergo imprisonment for 03 years.

10. If the petitioner has already undergone rigorous imprisonment for a period of 03 years including the period of remission etc. and if he is not wanted in any other case, he is directed to be released forthwith.



11. Accordingly, this appeal stands partly allowed.

(Sandeep Kumar, J)

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