

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1339 of 2019**

Arising Out of PS. Case No.-55 Year-2017 Thana- SANHAULA District- Bhagalpur

Vikas Kumar Sah, Son of Banke Bihari Sah, Resident of Village - Alpuera,
Ghogha, P.S.- Kahalgaon, Distt.- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dharendra Nath Jha, Adv. Mr.Dr. Manoj Kumar, Adv.
For the Respondent/s	:	Mr.Abhimanyu Sharma, 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

1. Heard Mr. Dharendra Nath Jha, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.
2. The appellant has been convicted for the offences under Sections 363, 366A of the Indian Penal Code and Section 4 of the POCSO Act, 2012 by judgment dated 16.09.2019 passed by the learned Additional District & Sessions Judge, -I-cum-Special Judge, (POCSO), Bhagalpur in G.R. Case No. 1566/17 arising out of Sanhaula P.S. Case No.



55/2017. By order dated 26.09.2019, the appellant has been sentenced to undergo RI for four years and to pay a fine of Rs. 10,000/- for the offence under Section 363 IPC; RI for five years and a fine of Rs. 10,000/- for the offence under Section 366-A IPC and RI for 12 years and to pay a fine of Rs. 20,000/- for the offence under Section 4 of the POCSO Act. All the sentences were ordered to run concurrently.

3. The victim, a girl of less than eighteen years and as claimed by her mother to be fifteen years, is said to have been abducted by the appellant who was her tutor for sometime. She came back within two days and appears to have made a statement before the Superintendent of Police, Bhagalpur, who sent her to the concerned police station for the needful. However, the case was lodged by her mother (PW3) on 07.05.2017 i.e. after a day of the victim not being found in her house. She has alleged in the F.I.R. (Sanhala P.S. Case No. 55/17) that the appellant, who is her neighbour, has abducted her fifteen years



old daughter for the purposes of marrying her. In this act, the parents of the appellant have also participated and helped him.

4. On the basis of aforementioned written report dated 07.05.2014, the subject F.I.R. was registered for investigation for the offences under Sections 363, 366(A) and 20 (B) of the Indian Penal Code and Section 4 of the POCSO Act, 2012.

5. It appears that police during the investigation did not find the accusation against the other family members of the appellant to be true and so only chargesheeted him, whereupon he was tried.

6. The learned Trial Court, after having examined seven witnesses on behalf of the prosecution including the Doctor and the Investigating Officer, convicted and sentenced the appellant as aforesaid.

7. Before analyzing the case and finding out whether the victim had made a correct statement before the Trial Court, we have first gone through the exhibits brought on record on behalf of the



prosecution.

8. One of the exhibits i.e. Exhibit -3 appears to be the self statement of the victim, said to have been written on 10.05.2017. It is addressed to no one in particular. It only says that the appellant lured her to come out of her house and go with him on 06.05.2017. She was brought to Patna and kept in a lodge. Later, the appellant left her at Bhagalpur Railway Station. During the period at Patna, she was subjected to sexual intercourse. After bringing her to Bhagalpur Railway Station, the appellant fled away. She could anyhow contact S.P's Office and reach there. She narrated about the occurrence to the S.P. who sent her to Sanhaura Police Station. The parents of the appellant, according to her, had no hand in the aforementioned kidnapping.
9. The victim also made her statement under Section 164 Cr.P.C. on 12.05.2017 in which though she has cast allegation against the appellant of having lured and taken her to Patna but has not spoken a



word about her being subjected to sexual intercourse.

She repeated before the learned Magistrate that on 09.05.2017, she went to the office of the S.P., who sent her to Sanhaura Police Station. She also repeated that she had not run away from the house of her own volition but on the appellant having brainwashed her in leaving her parental home.

10. The victim was subjected to medical examination on 11.05.2017 by Doctor Priyanka Rani (PW6). The victim was brought before her by a Mahila Constable. The doctor did not find any evidence of physical or chemical injury on any part of her body including the private parts. The vaginal swab was sent for forensic examination to the pathology department of JLNMC, Bhagalpur for the purposes of detection of spermatozoa. She was also referred to the radiology department for the X-ray of wrist, elbow etc., for age determination. PW6 received the report on 26.05.2017. No live or motile spermatozoa was found in the vaginal swab. According to the X-ray



report, the victim appeared to be less than eighteen years. Her opinion therefore, was that there was no evidence of any recent sexual intercourse. On further questioning from the side of defense, she was not very sure whether the victim could be between fifteen to seventeen years of age.

11. In this set of background facts, we have examined the evidence of the victim and her mother.

12. The mother of the victim (PW3) has supported the prosecution allegation and has deposed that the appellant was the tutor of her daughter. She learnt about the appellant having taken away her daughter from someone who had claimed to have seen the appellant and her daughter at Ghogha, a place in the neighbourhood. The brothers of the appellant later threatened PW3 that if she continued to prosecute the appellant, dire consequence would follow. However, in her cross-examination, she has stated that she was told by her sister-in-law, namely, Abha Devi (PW4) on telephone that the victim had gone out of her house in



her presence. A search was made for her for two to three days. It was only when no trace could be found of the victim that the subject FIR was lodged. In her cross-examination, she has also referred to one Sanjeev, son of Siyaram Pandit, with whom the victim never wanted to marry. After the lodging of the case, nobody from the police station came to enquire from her about anything. She was never made to give her further statement. She had no idea that the victim also had given her statement to the police.

13. The victim (PW5) has, however, deposed that she received a telephone call from the appellant on 06.05.2017 between 1.00 to 1.30 P.M. She was asked to come out of her house. When she came out and went to some distance, she found a car parked on the road. The appellant asked her to sit in that car. She was also asked to bring along with her Admit Card, her Photograph and Caste Certificate etc. On the asking of the appellant, she sat in the car. She was offered chocolate to eat but then after consuming



the same, she went in deep sleep and woke up only after five to six hours, when she found herself in a lodge at Patna. The appellant threatened her and insisted that she should stay with him. She was also made to write a letter. Very specifically, the victim has alleged that she was subjected to sexual intercourse. It was only when her parents filed a case against the appellant, he brought her to Bhagalpur Railway Station and left her there. The place where she was left by the appellant was very close to the S.P.'s Office. The S.P., Bhagalpur had sent her to Sanhaula Police Station where her parents also arrived. She gave her statement on 10.05.2017 in the Sanhaula Police Station (Ext. 3), about which we have referred earlier. She knew the appellant for the last two years as he was a private tutor and whose coaching classes she attended. There were about six to seven teachers in that coaching centre. She admitted that a boy named Sanjeev, resident of Banka is related to her. He is also an Advocate.



Neither she nor her parents were willing to perform her marriage with aforementioned Sanjeev. She has denied that she had ever written any letter to Sanjeev impleading him to spare her as she was not desirous of continuing with any kind of relationship with him. When she was shown the aforementioned letter addressed to Sanjeev, she denied that it was written by her and claimed that it was a procured document. From Patna to Bhagalpur, she had travelled on train.

14. The Investigator of this case, namely, Manoj Kumar (PW7) does not appear to have done anything which could bring any relevant material before the Trial Court. The FIR (Ext. 5) was recorded by him and he was also given charge of investigation. He had visited the house of the victim and had recorded the statement of Abha (PW4), Subodh Sah (PW1), Birendra Mandal (PW2). He had got the 164 Cr.P.C. statement of the victim recorded by the Magistrate. He did not enquire from the victim as to how she had come from Patna to Bhagalpur. Beyond this, the



Investigator had nothing to offer to the Court.

15. We have also perused the exhibits brought on behalf of the defense. Ext. -B refers to a note made by victim again, addressed to none but from the contents of the note, it appears that it is addressed to Sanjeev about whom we have referred to earlier. In that note, she had let Sanjeev know that she does not love him and that she wants to marry someone else. She had also advised Sanjeev to forget her.

16. There is yet another letter on record (Exhibit-D), the authorship of which is denied by the victim, which is addressed to the Superintendent of Police, Bhagalpur. In the afore-noted letter, she has alleged that her parents wanted to marry her to Sanjeev forcibly for which she was not agreeable. She was, therefore, assaulted by her parents. In order to avoid any further onslaught, she came out of her house on 06.05.2017 to go to the house of her sister namely, Anjani Kumari (not examined) but on way, Sanjeev Kumar forcibly abducted her and started pressurizing



her for marrying him. She could any how come out the stranglehold of aforementioned Sanjeev. She had therefore prayed for security to her person from the Superintendent of Police.

17. Exhibit-A perhaps makes no sense as it is a communication which remains unaddressed but expresses the intent of love with some pictograph. Exhibit-C perhaps is a billet-doux, overtly expressing her love and affection for the appellant and in which she has implored the appellant to take care of her.

18. With these backgrounds facts, coupled with the evidence of PW-1 and PW-2 namely, Subodh Sah and Birendra Mandal who claimed to have seen the appellant and the victim at the Railway Station sometimes after the victim had disappeared from her house, we doubt whether the allegations are true. We have also found that despite the victim prosecuting her studies and attending coaching classes, there has not been any determination of age on the basis of requisite education certificates. Though, no objection



was raised on behalf of the appellant with respect to the minority of the victim but in a case of this kind, it appears to be doubtful whether the victim was less than 18 years of age. The radiological report formed the basis for PW-6 to opine that the victim was less than 18 years of age; but less by how many years, even tentatively, could not be guesstimated by PW-6.

19. Thus for all practical purposes, there is no evidence on record with respect to the victim being a minor; less than 18 years of age for the Special POCSO Court to assume jurisdiction and try the appellant.

20. That apart, we have found that even when she had given her 164 Cr.P.C. statement before the Magistrate at the behest of the police, she did not at all advert to any sexual intercourse or any pressure exerted on her by the appellant to marry him. All that she said was that she was taken to Patna, kept in a lodge and then left at Bhagalpur.

21. We have also found that the family of the victim



knew Sanjeev who perhaps is a lawyer. There would have had been some talk of marriage of the victim with Sanjeev; otherwise the victim would not have referred to her disinclination to marry him.

22. Similar appears to be the case with the mother of the victim, who also said that she was not inclined to marry her daughter to Sanjeev but then, while talking about Sanjeev and her father namely, Siyaram Pandit, the mother referred to the father as her *Samdhi*.

23. Do we assume that the marriage had already been solemnized or was about to be solemnized ?

24. All the associated posers, viz., (i) whether the victim was less than the 18 years of age; (ii) whether she had developed any love relationship with her tutor/appellant; (iii) whether she was under some family pressure to marry Sanjeev; (iv) whether Sanjeev and his family were insisting for the marriage; (v) whether Exhibits- A, B and D bore the handwriting of the victim, could have been answered



if the Investigator would have taken some care to investigate the case in a proper manner.

25. With practically no assessment of age of the victim, the Trial Court has simply relied upon the medical evidence, which is very vague. A Trial Court ought not to surrender his judgment to the opinion of a third party, be he/she be an expert in radiology or medical science. That being the foundation for the Trial Court to assume jurisdiction to try the offender, the prosecution has failed to bring home and prove that the victim is less than the 18 years of age. That being so, in the 164 Cr.P.C. statement, the victim not referring to any sexual advances by the appellant even though she was in captivity of the appellant for two days, completely falsifies the prosecution case. The victim appears to have hyper-ventilated her accusation against the appellant, which in the present set of circumstances, appears to be on the pressure of her family.

26. The story of the victim having been offered



sedatives in the chocolate and her being kept in captivity in a lodge at Patna, also do not appear to be trustworthy. She has not alleged that she was locked inside the room and prevented from meeting people. She travelled by train from Patna to Bhagalpur. That also gave her a window to let people know that she was in the captivity of the appellant.

27. These grounds by itself would not have dented the prosecution version, if her own version before the Court were acceptable as fully reliable. With the background of the medicological report based on her clinical examination by PW-6 on 11.05.2017 only, showing no sign of rape or of violence having been perpetrated on her in recent past, the accusation against the appellant is rendered doubtful.

28. What may have happened for a young girl to get infatuated with the appellant remains unknown. One thing is certain, if the evidence of the victim is analysed, that she knew the appellant for the last two years. Did she develop a soft corner for him ? Or



was it an escape to a bolt-hole provided by the appellant, her tutor, in face of insistence of the family to marry Sanjeev, which she did not want. Was Sanjeev, an Advocate, was behind the filing of this case ?

29. All these issues remain unanswered for us to conclusively hold that the Trial Court was justified in convicting the appellant for the offences under Sections 363, 366(A) of the Indian Penal Code and Section 04 of the POCSO Act, 2012.

30. There also appears to be a total non-observance to the mandate of Section 53A of the Code of Criminal Procedure. The appellant does not appear to have been medically examined after his arrest.

31. Thus, giving benefit of doubt to the appellant, we set aside the judgment and order of conviction.

32. The appellant is acquitted of the charges.

33. The appellant is in jail since 03.06.2017. He is directed to be released from jail forthwith if not required or wanted in any other case.



34. The appeal stands allowed.
35. Interlocutory application/s, if any, also stands disposed of.
36. Let a copy of this order be communicated to the Superintendent of concerned jail for record and compliance.
37. Let the records of this appeal be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

sunilkumar/-

(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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