

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.697 of 2004

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Satrughan Jha, son of Jogendra Jha, Resident of village-Purnahiya, P.S.-
Saihara, District-Sitamarhi.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Pooja Prasad, Amicus Curiae
For the Respondent/s : Mr. Ramchandra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 06-12-2025

None appears on behalf of the appellant. The present matter is pending consideration for near about 21 years.

2. It has been requested and Ms. Pooja Prasad (E No.1441/22D/1634/2019), learned counsel, has shown her willingness to assist as Amicus Curiae in the present matter.

3. Accordingly, learned counsel Ms. Pooja Prasad (E No.1441/22D/1634/2019) has been appointed as Amicus Curiae in the present matter.

4. Heard learned Amicus Curiae appearing for the appellant and learned A.P.P. for the State.

5. The name of informant and victim have not been disclosed in the present judgment to protect the prestige and dignity of the victim.

6. The present appeal has been directed against the



judgment of conviction and order of sentence dated 23.09.2004 passed by learned Additional Sessions Judge, Fast Track Court No.5, Motihari in S.Tr. No. 189/1988 and 12/2002 whereby and whereunder appellant has been convicted for the offence punishable under Sections 363 and 366 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 2000/- (two thousand) each and in default of payment of fine, appellant has to undergo a further rigorous imprisonment of six months. All the sentences have been directed to run concurrently.

7. As per prosecution case, the informant gave a fardbayan before the Raxaul GRP on 02.01.1984 at about 1:00 P.M. is that when his daughter X having given food to him went to other room where his younger daughter, aged about 2 years, was sleeping. When he finished his meal, he heard the sound of weeping of his younger daughter Meera. He went there and found that the room was locked. He opened the room with the help of stone and found that a big wooden box was stolen away and his daughter X was traceless. On enquiry, he came to know that Satrugan Jha, Jagendra Kapar and Yogendra Sah had kidnapped his daughter and had also stolen away his wooden box in which the following articles were kept i.e. clothes,



jewellery, other domestic items and cash. The informant rushed to Raxaul Station, making search where he found Satrugan Jha and Yogendra Kapar with his daughter and caught them. It is further alleged that the stolen watch was in hand of accused Satrugan Jha. After that the Raxaul G.R.P. arrested the accused Satrugan Jha and lodged the F.I.R.

8. On the basis of fardbeyan given by the informant, Raxaul G.R. P.S. Case No.1/84 was registered for the offence punishable under Sections 366/379/411/34 of the Indian Penal Code. Charge-sheet has been submitted against the appellant and another under Sections 363, 364, 366 and 379 of the I.P.C. and cognizance was also taken under aforesaid Sections and the case committed to court of learned Additional Sessions Judge, Fast Track Court No.5, Motihari for trial and disposal. On 08.04.2002 charges were framed against the appellant under Sections 363, 366 and 379 I.P.C. Charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

9. In order to bring home guilt of accused person, prosecution has examined all together two witnesses as P.W. 1- Y (informant) / father of the victim and P.W. 2- X (victim).



10. Defence of the appellant as gathered from the line of cross-examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

11. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the second paragraph of the judgment.

12. Learned *Amicus Curiae* for the appellant submits that father of the victim has himself admitted that age of victim was 18 years at the time of occurrence. No question of kidnapping arose as she has voluntarily accompanied the appellant as victim (PW-2) has admitted that she has joined the company of appellant with her own volition and for the purpose of attracting offence of kidnapping, it is necessary that person must be deprived from the legal guardianship and the accused must have done something to induce the victim with an intention to deprive the victim from legal guardianship. In the present case, it is crystal clear that the appellant has not done anything rather the victim has joined the company of the appellant with her own volition and father has already stated that the age of victim is 18 years. Learned *Amicus Curiae* further submitted that on account of non examination of the



investigating officer, the place of occurrence has not been identified and the veracity of the prosecution witnesses has not been tested as defence has not got opportunity to test the veracity of prosecution witnesses in the light of oral statement given before the investigating officer. As such, the judgment of conviction and order of sentence passed by the concerned court is not justified and legal and same is liable to be set aside.

13. Learned A.P.P. for the State has submitted that the judgment of conviction and order of sentence passed by the concerned court is on the basis of material available on record. As per F.I.R., the age of victim is 15 years and though there are certain discrepancies in the evidence of PW-1, but whole prosecution story cannot be thrown away. Learned counsel for the State has submitted that PW-1 and PW-2 have supported and corroborated the story of prosecution. As such, the judgment of conviction and order of sentence passed by the concerned court is justified and legal and no interference is needed.

14. The question which arises for consideration is:-

Whether the prosecution has proved the case under Sections- 363 and 366 of I.P.C. against the appellant beyond the shadow of reasonable doubt?

15. I have perused the impugned judgment, order



of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

16. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Sections 363 and 366 of I.P.C.

17. P.W.-1 is informant as well as father of victim. During examination-in-chief he stated that the age of victim is 17-18 years on estimation and on the basis of allegation made in FIR the informant has also stated that the wooden box was kept in room. The informant has further stated that his daughter was caught with the appellant and another at Raxaul station and stolen watch was also owned by the appellant. During cross-examination, the informant has stated that he identified the appellant. He further stated that the appellant is son-in-law and the marriage ceremony was taken place with the consent of this witness and he filed the case at the behest of villagers and he denied the allegation of missing of wooden box. He has stated that the wooden box was found in his house. He has stated that all the articles were in wooden box and he has admitted that watch had given to the appellant. He has also admitted that PW-



2 went with her own will.

From perusal of evidence adduced by the PW-1 it is crystal clear that he has taken u-turn and he denied the allegation of theft. He has totally denied that the ring was also taken by the appellant rather he has given the ring to the appellant and the marriage was solemnized with his consent and he explained reason for filing the case and his statement is totally contradictory with the allegation made in the FIR and his version is not trustworthy and does not carry authenticity in the light of discussion made above.

18. P.W. 2-X is victim herself. She has stated that she went to the house of appellant and the appellant took away to Riga and then to Bairganiya where they stayed for two days in a hut. She has further stated that her father/ (PW-1) saw the appellant and PW-2 at Raxaul Station and father of the victim came and the appellant was apprehended. She has further stated that her statement was recorded before the Magistrate which has been marked as exhibited-2. During cross-examination she has stated that she had gone with Satrugan Jha (appellant) and she was in love with the appellant. She has further stated that she got recorded her statement before the Magistrate.

19. In the statement of victim recorded under Section



164 Cr.P.C., she stated that she was 14 years old. Victim has further stated that she was sitting adjacent to his father after providing meal to him. Her father told her to bring water and she went to take water from tap where she saw her villagers Yogendra, Kishore and Magra Lohar out of whom Magra Lohar was carrying the wooden box which was earlier kept in her house. When she raised alarm, Yogendra and Kishore caught hold of her and tied her mouth with a towel and took her to a lonely place. Magra Lohar put the wooden box at the house of appellant Satrugan Jha and Magra Lohar also brought Satrugan Jha with him to the place where she was kept confined by Yogendra and Kishore. Handing her over to appellant (Satrugan Jha), all the three persons returned back. Thereafter, the appellant took the victim forcibly to Riga Railway Station from where she was taken to Bairgania Railway Station and he kept her in a hut and she stayed there two days and two nights. It is alleged that the appellant committed rape upon the victim under threat. On 05.01.1984, the appellant proceeded from Bargania with her and on the same day at 9:00 A.M. they came to Raxaul. At Raxaul railway station, victim saw her father and cried upon which her father came there with some persons and they apprehended the appellant and got her



released. Thereafter, she came with her father and she was medically examined by the doctor.

From perusal of the statement recorded under Section 164 Cr.P.C., it is crystal clear that her statement adduced before the court is totally inconsistent with the statement recorded under Section 164 Cr.P.C. In this way, the victim has not supported the allegation made in FIR. She joined the company of the appellant and she was in love with the appellant. From perusal of evidence adduced by PW-2, it is crystal clear that no wrong has been committed by the appellant to leave the parental house of victim. Though she has recorded her statement under Section 164 Cr.P.C. that she was examined by the doctor, but neither doctor was examined nor documentary proof regarding medical examination is available on record. In this way, the statement of victim is fit to be discarded on the basis of discussions made above.

20. It is well settled law that evidence given in court on oath coupled with opportunity of cross examination to the accused has great sanctity and that is why same is called substantive evidence. It is well settled by catena of judicial pronouncement that statement under Section 154 Cr.P.C. or under 161 Cr.P.C. or under 164 Cr.P.C. can be used for



corroboration and contradiction only. In *R. Shaji vs. State of Kerala* reported in (2013) 14 SCC 266, the Hon'ble Supreme Court said that a proposition to the effect that if statement of a witness is recorded under Section 164 of the Cr.P.C., his evidence in court should be discarded, is not at all warranted. As the defence had no opportunity to cross examine the witness whose statement was recorded under Section 164 Cr.P.C. or under Section 161 Cr.P.C., such statements cannot be treated as substantive evidence.

21. Statement of victim cannot be trustworthy in the light of the fact adduced during evidence before the court is quite inconsistent with the story of prosecution. Her evidence does not inspire confidence and such evidence cannot be trustworthy.

22. From the perusal of prosecution story, it is crystal clear that the age of victim is 15 years as claimed by the informant who set the prosecution story into motion but he himself stated during examination-in-chief that age of victim is 17-18 years and there is no documentary proof regarding the age of victim and the age of victim is not determined either by the medical evidence or by the documentary evidence.

23. On the point of proving the age of victim, it is



necessary to quote *the case of Sunil v. the State of Haryana* reported in *AIR 2010 SC 392*, in which the Hon'ble Supreme Court observed that "conviction cannot be based on an approximate age of the victim." *In State of Madhya Pradesh vs. Munna @ Shambhoo Nath* reported in *(2016) 1 SCC 696*, the Hon'ble Supreme Court held that "the evidence of approximate age of the victim would not be sufficient to any conclusion about the exact age of the victim." In *Rajak Mohammad v. State of Himachal Pradesh: reported in (2018) SCC OnLine SC 1222*, the Hon'ble Supreme Court had observed that though the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, the doubt, if any with respect to the correct age of the victim, naturally, must go in favour of the accused.

24. In the present case, prosecution has failed to prove that the victim was minor and on that point neither I.O. was examined nor document was produced to show that victim was minor on the alleged date of occurrence. Even the victim's father has stated that victim is aged about 17-18 years.

25. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the



point of identifying the place of occurrence.

26. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

27. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence.



The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

28. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."

29. In the present case, the victim was a literate girl as she has signed on her statement recorded under Section 164 Cr.P.C. The victim has not supported the story of prosecution as she has stated that she has voluntarily join the company of her husband.

30. P.W.-1, the father of the victim has also not been able to give correct date of birth of the victim. In his statement he clearly stated that he is giving an approximate date without any basis or record. In a criminal case, the conviction of the appellant cannot be based on an approximate age of the victim



which is not supported by any record. It would be quite unsafe to base conviction on an approximate age.

31. It is worth to note that I.O. has not been examined and contention of learned counsel of the appellant is quite sustainable in the light of the fact that on account of non examination of the investigating officer, the place of occurrence has not been identified and the veracity of the prosecution witnesses has not been tested as defence has not got opportunity to test the veracity of prosecution witnesses in the light of oral statement given before the investigating officer.

32. On evaluation of the judgment of conviction and order of sentence as well as deposition of PW-1 and PW-2, it is clear that PW 1 has admitted that at the time of occurrence, the victim's age was 15 years though during examination in chief he has stated that victim is aged about 17 to 18 years. PW-2, who is victim of the case, during adducing evidence before the Court she has stated that she has joined the company of appellant with her own volition.

33. The statement of PW-2, it is evident that she has joined the company of the appellant and no wrong has been committed by the appellant against the victim as she has voluntarily left her parental house. In the light of aforesaid



discussions, the case of *S. Varadarajan vs. State of Madras* reported in *AIR 1965, 942* Hon'ble Supreme Court has observed in paragraphs nos. 7 and 9 of the said judgment as under:-

7. *"When the victim willingly accompanied the appellant, law did not cast upon him duty of taking her back to her father's house or even of telling her not to accompany him as she was on the verge of attaining majority and she was capable of knowing what was good and what was bad for her."*

9. *"There is a distinction between taking and allowing a minor to accompany a person. In order to prove taking away from the keeping of lawful guardian something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of intention of the minor to leave the house of the guardian."*

34. In the light of the aforesaid facts and observation made by the Hon'ble Supreme Court, the prosecution has failed to prove the case beyond reasonable doubt as father of the victim (PW-1) during examination in chief has stated that victim is aged about 17-18 years and victim (PW-2) during adducing evidence in court has stated that she has joined the company of appellant with her own volition. No document is produced to



show that the victim is minor. In this way, she has reason to decide her fate. In view of the observation made by the Hon'ble Supreme Court, the appellant has no liability to return back the victim to her house. The contention of appellant's counsel is quite convincing. Appellant has not, in any way, committed any offence, as alleged.

35. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, the judgment of conviction and order of sentence dated 23.09.2004 is hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of his bail bonds.

36. The interlocutory application, if any, also stands disposed of.

37. The records of this case be also returned to the concerned trial court forthwith.

38. Before parting with the judgment, I appreciate the legal assistance rendered by Ms. Pooja Prasad, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs.5,000/- (five thousand) to Ms. Pooja Prasad,



learned Amicus Curiae, as consolidated fee for the legal assistance rendered by her within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

amitkumar/-

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