
(2006) 08 JH CK 0124
In the Jharkhand High Court

Imtiyaz Mian alias Imtiyaz Ansari

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 14-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 164
Penal Code, 1860 (IPC) — Section 363, 366A, 376

Citation : (2006) 4 JCR 642

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—This appeal arises against the judgment of conviction and sentence dated 17.2.2004 passed by the 1st Additional Sessions Judge. Chatra in Sessions Trial No. 21 of 2002 whereby. Unlearned Additional Sessions Judge convicted the appellant for the offence under Sections 363 and 366-A of the Indian Penal Code and sentenced him to undergo R.I. for three years and to pay a fine of Rs. 2,000 (Rupees Two Thousand) and in default thereof, to undergo further imprisonment for six months u/s 363 of the Indian Penal Code and to undergo R.I. for five years and to pay a fine of Rs. 2,000/- (Rupees two thousand) and in default thereof to undergo further imprisonment of six months u/s 366-A of the Indian Penal Code.

2. The prosecution case in short, as disclosed in the FIR lodged with the Tandwa Police Station by the informant Mahendra Thakur (PW 1) is that his sister namely Sushma Kumari, aged about 12 years was traceless from 3:00 a.m. of the night falling between 4th and 5th of March, 2001 and he came to know that his co-villager Imtiyaz Mian (appellant) aged about 22 years was also missing from the said very night. He suspected that said Imtiyaz Mian (appellant) must have kidnapped his minor sister with bad intention. Accordingly, the FIR was registered under Sections 363, 366-A and 376 of the Indian Penal Code against the present appellant and accordingly, after the investigation, charge-sheet was

submitted under the aforesaid Sections of the Indian Penal Code against the appellant.

3. Just on the next date of the occurrence, the appellant was apprehended with the victim girl Sushma Kumari at Ranch by Sukhdeo Nagar Police Station and thereafter, she was produced in the Court at Chatra where, the statements of the victim was recorded u/s 154, Cr PC (Ext. 2).

4. In order to establish the charges, altogether eight witnesses were examined on behalf of the prosecution. PW 1 is the informant Mahendra Thakur who has fully supported his statements made in the FIR PW 2 is Photo Devi. She has corroborated the statements of the informant Mahendra Thakur (PW 1) and has further stated that the accused/appellant was residing near the house of the victim girl and he used to roam around the house of the informant.

PW 3 Chito Sao who is neighbour of the informant has stated in his evidence that he came to know about the alleged kidnapping of the sister of the informant in the morning. He was told about the occurrence by the father of the victim girl.

PW 4 the victim girl Sushma Kumari has stated in her evidence that the appellant had sent a letter to her but she, out of shame and fear, did not disclose the said fact to anyone. She further stated that one night, the appellant stopped her and threatened her that in case she does not follow his dictates, his father and brother would be killed. She further stated that out of fear, she started obeying the appellant Imtiyaz Mian and in that course, she was also raped twice by him in spite of her resistance. She further stated in her evidence that she was forcibly taken by the appellant to the field and thereafter, she was forcibly made to eat sweets and thereafter, she was taken to Ranchi by Singhwahini Bus. She further stated that as soon as they reached Ranchi, the Police arrested them and they were brought to the Police Station. There-after, she was medically examined by a Doctor. Her brother was informed to come to Ranchi and thereafter, Chatra Police took her to Chatra and produced her to Court where, the statements u/s 164, Cr PC was recorded by the Magistrate. She proved her statements u/s 164, Cr PC which was marked Ext 2. In her evidence, the victim has given a clear description of earlier occurrence.

PW 5 is Binod Halwai PW 6 is the Investigating Officer. PW 7 is the Judicial Magistrate who recorded the statements of the victim girl u/s 164, Cr PC and PW 8 is Dr. Shyam Nandan Singh who has formally proved the injury report Ext 5 prepared by Dr. Rita Lal.

5. In the medical report (Ext. 5), the doctor has mentioned that no definite opinion regarding rape could be given by her and that the age of the girl was found to be in between 17 to 18 years as per X Ray Report.

6. Learned Counsel for the appellant Mr. B.K. Dubey submitted that the victim girl was not a minor rather she was major even according to the Medical Report Ext 5 and she had left her house with the appellant out of her free will therefore,

the conviction of the appellant by the trial Court was erroneous.

7. With regard to the age of the girl, it appears that in the FIR, the brother of the victim girl has stated that she was aged about 12 years. In the statements u/s 164, Cr PC, which was recorded on 7.3.2001, the victim girl stated her age to be 13 years and the Judicial Magistrate, who recorded her statements, assessed her age to be of 13 years. The victim girl was thereafter examined in Court as PW 4 on 6th March, 2003 and there she stated her age to be 15 years and the trial Court also passed her age to be the same i.e., 15 years.

Thus, from the aforesaid fact, in my view, the age assessed by the doctor on the basis of X-Ray report only cannot be accepted to be a conclusive proof of the age of the victim girl rather, the materials on record regarding estimation of age by the Court, it appears that the victim girl was minor aged about 12-13 years on the alleged date of occurrence.

8. From the evidence of the minor victim girl, it appears that she did not disclose about occurrence to any one because of the fact that the appellant had given threat to her that if she discloses the fact to anyone then her father and brother would be killed. Therefore, it is quite but natural that the minor girl would certainly come under mental pressure and therefore, it is just possible that the victim started following I he dictates of the appellant and thereby, she was forcibly taken by the appellant to Ranchi against her will. The statements of the girl made u/s 164, Cr PC is fully corroborated by her evidence in Court and it clearly establishes the fact that the victim minor girl (PW 4) was kidnapped by the appellant and thereafter, she was forced by the appellant to go with him to Ranchi by Singh Wahini Bus and when the said Bus reached Ranchi. it was intercepted by Sukhdeo Nagar Police Station and then the appellant as well the victim girl were apprehended by the Police.

9. In view of the discussion above. I find that the learned trial Court has rightly convicted and sentenced the appellant for the offence under Sections 363 and 366-A of the Indian Penal Code.

10. Lastly, Mr. B.K. Dubey, learned Counsel appearing for the appellant submitted that since the appellant has remained in custody for about 2-? years and thereby he has sufficiently been punished for the offence committed by him and therefore, the sentence awarded by the trial Court be reduced suitably.

Considering the nature and gravity of offence, I do not feel that the sentence awarded by the trial Court to the appellant for the said offence is excessive.

11. Accordingly, by affirming the conviction and sentence of the appellant, this appeal is dismissed. The appellant who is on bail, his bail bonds are hereby cancelled and he is directed to surrender in the Court below forthwith to serve out remaining period of sentence. Appeal dismissed.