
(2006) 04 JH CK 0067
In the Jharkhand High Court
Case No : Criminal Appeal No. 258 of 2000

Nabiul Hassan

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 366, 366(A), 376

Citation : (2006) CriLJ 3948 : (2006) 3 JLJR 27 : (2006) 3 JCR 270 : (2006) 2 AIRJharR 843

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; APP, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—The sole appellant Nabiul Hassan has preferred this appeal against the judgment dated 28.02.2000 passed by Additional District and Sessions Judge, Pakur in S.T. No. 270 of 1997/2 of 1998 whereby the appellant has been convicted under Sections 366(A) and 376 of the Indian Penal Code and has been sentenced to undergo R.I. for five years and seven years respectively which shall run concurrently.

2. Brief facts leading to this appeal are that one Gauri Devi, minor daughter of Mahabir Prasad Manjhi, P.S. Pakuria district Pakur, went missing from her house in the afternoon of 7th June 1997. According to informant, father of Gauri Devi, earlier Gauri Devi has gone to see television in the house of one Sohrab Mian, a neighbor. He suspected that the appellant Nabiul Hassan has taken away his daughter for the purpose of marriage. According to him he waited his daughter to return thereafter searched in the night but ultimately when she could not be traced till 13th June 1997 he went to the Pakuria Police Station to report the matter. Further stated that after recording his statement Pakuria P.S. Case No. 18 of 1997 was registered under Sections 366, 366(A) against this appellant, while the investigation was going on, Gauri Devi and Nabiul Hassan were

arrested by Dumka Sadar Police in suspicious circumstances and brought to Pakuria Police Station. The police investigated the case and finally submitted the charge sheet against the appellant while continuing to investigate against other accused persons. The appellant Nabiul Hassan has remained in custody through out trial and during the pendency of this appeal right from 2nd half of 1997.

3. The case of the appellant was committed for trial by the court of sessions where he was charged on 2.3.1998 u/s 366/366(A), 376 and 120B of the Indian Penal Code. The appellant pleaded not guilty and claimed innocence. According to him the girl has gone out of her on own free will with him The learned lower court after examining the witnesses considered the defence and ultimately found the appellant guilty of offences u/s 366(A) and 376 of the Indian Penal Code. The learned court below has sentenced the appellant to serve R.I. for five years and seven years on each count directing the sentences to run concurrently.

4. This appeal has been preferred on the grounds that the court below has committed mistake of facts and accepted the evidences in spite of non-availability of medical evidence of rape as well as about the age of the girl. It is also asserted that the victim has gone out of her own free will and according to prosecution case also she did not object on being taken to different places during this period. The learned Counsel for the appellant attacked the judgment on grounds that the prosecution case suffers with inherent contradictions. According to defence, Gauri Devi did not like her husband and she has been eager to live with the appellant but under pressure of her family she has deposed against him.

5. The learned APP appearing for the State criticized the argument and submitted that in view of the specific evidence of the victim that she has been subjected to sexual exploitations, being a minor , the sentences imposed on the appellant are fit to be maintained.

6. The learned Counsel for the appellant drew my attention towards the fact that the FIR was lodged after a week only when Dumka Police brought Gauri Devi to her house. It was further pointed out that P.W. 1, sister of Gauri Devi has not alleged that she was subjected to rape. My attention was further drawn towards the statement of victim Gauri Devi in cross examination to indicate that there were contradictions in her statement regarding the alleged rape vide para 6 of the cross examination. The learned Counsel for the appellant pointed out that in this cross examination her activities could show that she was willing to go with the appellant vide para 7, 8 of the cross examination. Learned Counsel for the appellant further pointed out that even P.W. 5 brother of the said Gauri Devi, has not disclosed in examination in chief, what has happened during this period with Gauri Devi. Much stress laid down that the doctor who examined the girl Dr. Priti Rani has not been examined in the lower court and the injury report (Ext. 4) could not be used against the appellant properly. As such appellant deserves to be acquitted of the charges.

7. The learned APP appearing for the state pointed out that during cross

examination of witnesses, P.W. 4, 5, 6, it has not been disputed that Gauri Devi has gone with the appellant as alleged by the informant. My attention was again drawn towards the fact that Gauri Devi was assessed to be aged about 14-16 years on 16.6.1997 by the doctor (vide Ext-4), so even if she consented to go with the appellant, the offences u/s 366 appears to be proved. Learned APP further drew my attention towards the averment of Gauri Devi vide para -2 of her examination in chief that she was subjected to rape for two days at Dumka which has been further confirmed in cross examination vide para-8. This witness has been cross examined at length only to suggest that she got sufficient opportunity to raise alarm, run away from the custody of appellant and to make protest about abduction.

8. I have carefully gone through the evidences available on the records and find that the story of the prosecution that Gauri Devi has been induced to go with Nabiul Hassan, the appellant in the after noon of 6th July 1997 to different places, the evidence of Gauri Devi implicates the appellant thickly in the offences u/s 366(A) as well as 376 of the Indian Penal Code. The Medical evidence is silent on this point, however these aspects are of no use at the present when the appellant Nabiul Hassan remained in custody from 16th June 1997 till this date. The impugned judgment discussed the evidences in details why learned lower court relied upon the prosecution version, I do not find any apparent reason on record to disagree with the conclusion of the learned lower court.

9. In such view of the facts, mentioned above, I find that the present appeal is without merit and further has become infructuous. Accordingly, this appeal stands dismissed, The appellant having served the period of imprisonment may be released henceforth, if not required in any other case.

10. Office is directed to send a copy of this judgment along with original case record to the concerned lower court for information and needful in accordance with law.