
(2011) 07 PAT CK 0143

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 186 of 1996

Sanjit Sao @ Sanjit Kumar Sao and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 164, 334, 363, 366, 368

Citation : (2011) 07 PAT CK 0143

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Prasad, J.—No one appears on behalf of the Appellants. Mrs. Vimala Kumari, Advocate is appointed as amicus curiae to assist this Court.

2. Heard learned Counsel for the amicus curiae and learned Counsel for the State.

3. The Appellants have been convicted u/s 366 and 376 of the Indian Penal Code and have been sentence to undergo rigorous imprisonment for seven years for offence u/s 366 and to undergo rigorous imprisonment for ten years for offence u/s 376 of the Indian Penal Code.

4. The prosecution case as alleged by the informant is that her daughter Sheela Devi had come from Sasural and on 20.05.1993 she had taken to bath on the Ganges but not returned and then the information was given to the police which registered station diary entry No. 360 dated 26.05.1993 but again on 06.07.1993 she gave a Sanha alleging therein that on 06.07.1993 she received information that co-villagers Sushil Sao @ Sushil Kumar and Sanjit Sao @ Sanjit Kumar had kidnapped her daughter and kept her at Lakhisarai using her for illicit intercourse and then the police registered Maranchi P.S. Case No. 26 of 1993 dated 06.07.1993 for offence u/s 363 and 366/34 of the Indian Penal Code and police after registering the case proceeded for investigation and then during investigation police raided the house of one Parbhu Dayal in Lakhisarai and

recovered the victim and the accused Sanjit Sao and Sushil Sao and subsequently charge-sheet was submitted under Sections 363, 366, 376 and 368 and allied sections of the Indian Penal Code.

5. On the charge sheet the cognizance was taken and the case was committed to the court of session and after commitment the charge was framed and 11 witnesses were examined on behalf of the prosecution and after considering the oral and documentary evidence the Appellants were convicted as stated above.

6. Learned Counsel for the Appellants, however, contended that the doctor has not been examined and the Appellants have remained in jail for more than four years and the occurrence is of the year 1993.

7. Learned Counsel for the State, however, submitted that the prosecution has proved the case beyond reasonable doubt and the victim herself has submitted that the prosecution and the I.O. has proved the recovery of the victim along with the two Appellants and the victim has supported the prosecution case about the kidnapping and rape and hence the matter is concerned with the offence u/s 376 where the minimum sentence prescribed is seven years and no reason to show leniency in such offence.

8. However, on the respective submissions of the parties and perusal of the records it is apparent that the victim has supported the prosecution case that she was kidnapped while she was taking bath and she was taken away at the threat of pistol to kill and took her in Ghunghat and she was kept at Lakhisarai. The two witnesses P. Ws. 2 and 4 have also supported the contention of the victim as they have supported that the Appellants were taking the victim in Ghunghat and on inquiry about the victim they disclosed that she is his ?Bhabhu. The witnesses have also supported the prosecution case about the kidnapping of victim. The victim P.W. 9 has specifically stated in her evidence that accused persons asked for illicit relations and then she disclosed that she is married and why they are destroying her chastity, but both committed illicit intercourse against her will though she has used the words "Bura Kam" but the manner in which she has specifically stated in her evidence that her cloths were taken out and they also become necked and committed illicit work (Bura Kam). She has further stated that they used to tie her hands but only when they brought customers they used to untie her hands and hence not only the accused persons misused her for illicit intercourse for themselves but even by the customers. P.W. 9 the victim has supported the prosecution case regarding the kidnapping and rape.

9. P.W. 10 is the police officer who has recovered the victim from the house of the Appellant at Lakhisarai along with two Appellants and got the statement of the victim recorded u/s 164 of the Code of Criminal Procedure which also corroborate to the prosecution case. Hence, taking into consideration the entire evidence, I do not find any merit in the appeal and hold that the prosecution has proved the case beyond reasonable doubt and hence the order of conviction recorded by the lower court is not liable to be interfered with as there is nothing

in the evidence of victim to doubt her testimony.

10. Learned Counsel for the Appellants, however, contended that a lenient view may be taken.

11. However, having regard to the nature of crime I do not find any reason to take any lenient view in the matter and hence I do not find any merit in the appeal and the same is dismissed.