

(2006) 08 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal No's. 58 and 103 of 2000 (R)

Santosh Kumar Biswas and Aslam Ansari

APPELLANT

Vs

State of Bihar now Jharkhand

RESPONDENT

Date of Decision : 14-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 363, 366, 376, 376(1)

Citation : (2007) 2 JCR 10

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Jai Prakash in Cr.app.No. 58 of 2000 and N.K. Sahani in Cr.app. No. 103 of 2000, for the Appellant; A.P.P, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Since both the appeals arise out of common judgment it were heard together and are being disposed of by this common order.

2. The appellants, Santosh Kumar Biswas, and Aslam Ansari were put on trial along with Tohid Khan to face trial u/s 366 and 376(1) of the Indian Penal Code on the allegation that the appellants Santosh Kumar Biswas and Aslam Ansari along with co-convict Tohid Khan kidnapped Sunita Kumar (P.W.1) Kabita Kumari (P.W.3) and Meena Kumari (P.W.4) respectively and committed rape upon them respectively and the trial court having found them guilty u/s 376(1) of the Indian Penal Code sentenced them to undergo rigorous imprisonment for seven years and further on finding them guilty to undergo rigorous imprisonment for five years u/s 366 of the Indian Penal Code with the stipulation that both the sentences shall run concurrently.

3. The facts of the case are that the informant Dwarika Rawani (P.W.2) informed the police regarding missing of her daughter Sunita from his house from 19.12.1996, upon which a sanha was lodged. Subsequently on 20.3.1997 the informant (P.W.2) lodged First Information Report (Ext 4) stating therein that her

daughter Sunita Kumari (P.W.1) had gone to school and came back in the evening and while she had gone to answer call of nature, she was kidnapped by the appellant Santosh Kumar Biswas. Upon the said information, a case was instituted u/s 363 of the Indian Penal Code. When the matter was pending for investigation, the informant P.W.2 informed the police on 1.3.1997 that his daughter Sunita Kumari (P.W.1) as well as one Meena Kumari (P.W.4) have been seen in the company of the appellants, Santosh Kumar Biswas and Tohid Khan in a Hotel at Giridih. On getting this information the Investigating Officer (P.W.13) came to Giridih and arrested the appellants Santosh Kumar Biswas and Tohid Khan and also took Sunita Kumari (P.W.1) and Meena Kumari (P.W.4) in to custody and subsequently took the statements of Sunita Kumari and Meena Kumari u/s 161 of the Code of Criminal Procedure wherein they (Sunita Kumari and Meena Kumari) stated that both of them had gone with the appellants Santosh Kumar Biswas and Tohid Khan to Calcutta where they got married with Santosh Kumar Biswas and Tohid Khan respectively. The police also got their statements recorded u/s 164 of the Code of Criminal Procedure wherein Sunita Kumari (P.W.1) and Meena Kumari (P.W.4) made similar statements. Thereafter both the girls Sunita Kumari and Meena Kumari were sent before Dr. Laxmi Pandey (P.W.15) for medical examination, who on examining Sunita Kumari and Meena Kumari did find the age of Sunita Kumari in between 16-18 years and the age of Meena Kumari in between 18-20 years on the basis of radiological record and did opine that both were subjected to sexual intercourse and accordingly she issued medical report which has been marked as Exts. 2/1. Subsequently, third victim Kavita Kumari was produced before the police by her father and the police also recorded the statement of Kavita Kumari u/s 161 of the Code of Criminal procedure, who disclosed that she was kidnapped and was taken to Kolkata along with Sunita Kumari (P.W.1) and Meena Kumari (P.W.4) by Aslam Ansari, Santosh Kumar Biswas and Tohid Khan where Aslam Ansari committed rape on her. Kavita Kumari (P.W.3) was referred to Dr. Rita Gupta (P.W.14) for medical examination, who on examining her did find the age in between 16-17 years and also did find the hymen old ruptured and opined that she is habituated to intercourse. Dr. issued medical report which was marked as Ext.2.

4. After completion of investigation the police submitted charge sheet against these two appellants, namely, Santosh Kumar Biswas and Tohid Khan along with Aslam Khan under Sections 363, 366, 376 of the Indian Penal Code and accordingly, cognizance of the offences was taken and in due course when the case was committed to the court of sessions, charges were framed to which accused pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined the victim girls, namely, Sunita Kumari, P.W.1, Kavita Kumari, P.W.3 and Meena Kumari, P.W.4 who in their evidences did disclose that they had gone to Mahuda to witness a film show but did not get ticket and, therefore, while were returning home, saw a car parked near the cinema hall and the appellants were sitting on it and on the request of those three girls, the appellants agreed to give them lift and, accordingly, they

boarded on the car but instead of taking them to home they brought them at Gomoh Station and then to Gaya on a train where they kept them for two days and then brought them to Kolkata and kept them in a rented house where Santosh committed rape on Sunita Kumari (P.W.1). Tohid Khan committed rape on Meena Kumari (P.W.4) and Aslam Khan committed rape on Kavita Kumari (P.W.3). They have further deposed before the court that as they were put on a threat, they never raised any alarm nor did inform to anybody and were kept at Kolkata for about two months and then went on having sex with them forcibly. The prosecution examined other witnesses such as the informant (P.W.2), Manbhum Mahato, P.W.5, Father of Kabita Kumari, Gujar Rewani, P.W.6, Father of Meena Kumari and also other witnesses including Dr. Rita Gupta P.W.14 and Dr. Laxmi Pandey, P.W 15, who had examined the victims.

6. Learned Sessions Judge after placing reliance mainly on the testimonies of the victims, namely, Sunita Kumari, P.W.1, Kavita Kumari, P.W.3 and Meena Kumari, P.W.4 did find that the accused persons, namely, Santosh Kumar Biswan, Aslam Ansari and Tohid Khan after kidnapping committed rape upon Sunita Kumari, P.W.1, Kavita Kumari, P.W.3 and Meena Kumari, P.W.4 respectively and, accordingly, convicted and sentenced them as aforesaid.

7. Being aggrieved with the judgment and order the aforesaid two appellants have been preferred the appeals.

8. Learned Counsel appearing for the appellant Santosh Kumar Biswas submitted that the prosecution has palpably failed to establish that the appellant committed offence u/s 366 and 376(1) of the Indian Penal Code as it was the statement of the girl Sunita Kumari made before the police at the first instance that she on her own accord came to Kolkata with Santosh Kumar Biswas and married him and subsequently, she made statement also u/s 164 of the Code of Criminal Procedure of the same nature but in course of evidence she deposed in different manner which in any event cannot be taken to be true taking into consideration the background of the case. Further testimony of Sunita Kumari P.W.1 does not inspire confidence to be believed as had the occurrence been true, she would have raised an alarm or inform to some body as soon as she would have opportunity to do so but she admittedly did not do even though she was along with the appellant at different places and that too for months together and therefore, the testimony of P.W.1 is not worth reliable at all. More or less same argument was advanced on behalf of the appellant Aslam Ansari.

9. Heard learned Counsel appearing for the State.

10. It is the case of the prosecution as has been stated above that Sunita Kumari, Kavita Kumari and Meena Kumari, P.Ws. 1, 3 and 4 while were returning home from Cinema Hall, came across with the appellants at Mahuda, who were sitting in a Car and requested them for lift and when they accepted their request all the three girls boarded on a Car but the accused persons instead of taking them to their homes brought them at Gomoh and made them to board on a train

and were brought at Gaya where they were kept for two days and then brought to Kolkata and kept them confined in a room and the appellants Santosh Kumar Biswas and Aslam Ansari committed rape upon Sunita Kumari and Kavita Kumari respectively for months together and the co-convict committed rape upon Meena Kumari. Further case appears to be that after some months when Sunita Kumari and Meena Kumari were in company of Santosh Kumar Biswas and Tohid Khan at Giridih, they were apprehended by the police. From their evidences it is evident that she were taken to Gomoh station on a car and thereafter they were brought at different places on a train and they stayed at Gaya for some days and then came to Kolkata but they did not care to inform any persons. Though they have alleged that they had been kept confined throughout but this is not only unbelievable but also appears to be improbable as one can hardly believe that they would not have got any occasion to meet any persons for divulging the acts of the accused persons. In fact from the evidence of P.W.3 I do find that she was taken by co-convict Aslam Ansari to the place of his relative where she was kept for some days. Similarly, P.W.1 Sunita Kumari has also disclosed in her evidence that the appellant Santosh Kumar Biswas took her to his relative's house. These facts itself indicate that Sunita Kumari and Kavita Kumari were not confined to a place forcibly, rather they were taken to different places and they seems to have went to different places willingly. Furthermore, I do find that Sunita Kumari at the first instance made statement before the police u/s 161 of the Code of Criminal Procedure and subsequently u/s 164 of the Code of Criminal Procedure before the Magistrate that she had gone with Santosh Kumar Biswas to Kolkata with her own accord and married him. Therefore, under the aforesaid circumstances, evidence given by P.W.1 that she was forcibly taken by the appellant and was raped by appellant No. 1 does not inspire confidence to be believed at all and accordingly her evidence is rejected. However, case of Aslam Ansari appears to be some what different as Kabita Kumari, P.W.3 has never made any statement before the police that she came to Kolkata with Aslam Ansari with her own will and married him. But taking into consideration the facts and circumstances as has been stated above, one would never believe that Kabita Kumari PW.3 was kept confined and was raped by appellant No. 2 when she had been taken to different places and before different persons and hence her evidence also does not inspire confidence to be believed. It is significant to note-here that the trial court has found all the three girls aged about 18 years or more. In the circumstances, as stated above, order of conviction suffers from infirmity and hence it is set aside. Both the appellants are hereby acquitted of the charges levelled against them and are discharged from the liability of their bail bonds. Both the appeals are allowed.