
(2008) 07 PAT CK 0030
In the Patna High Court

Shambhu Giri

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 364, 366, 372

Citation : (2008) CriLJ 4786 : (2008) 4 PLJR 557

Hon'ble Judges : Syed Mohammad Mahfooz Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Syed Mohammad Mahfooz Alam, J.—This Criminal Appeal is directed against the judgment and order dated 26.6.1993 passed by Sri Anil Kumar Verma, 2nd Additional Sessions Judge, Sitamarhi in Sessions Trial No. 14/88/44/ 89 whereby he has convicted the sole appellant Shambhu Giri u/s 366 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of three years.

2. The prosecution case, as per the complaint petition filed by Jai Narain Giri before the Sub-Divisional Judicial Magistrate, Sitamarhi which was later on converted into first information report, in brief, is that his daughter Sumitra Devi was married to accused Shambhu Giri (sole appellant) about seven years ago. On 19.1.1987 the appellant along with accused No. 2 came to the house of the informant Jai Narain Giri and took Sumitra Devi with them on the pretext of Bidagiri. On 9.2.1987 the informant went to the village Madheshra and visited the house of the appellant but he did not find his daughter there. Thereafter the informant repeatedly asked the appellant about the whereabouts of his daughter but the appellant did not give any satisfactory reply. It is stated that the informant learnt that the appellant along with other accused persons might have killed his daughter or kept her concealed somewhere for some illegal purposes.

3. On the basis of the above complaint which was forwarded to the Officer-in-

charge Sonbarsa Police Station for institution of the first information report, Sonbarsa P.S. Case No. 27/87. dated 17.4.1987 under Sections 364 of the Indian Penal Code was instituted and thereafter the investigation of the case was handed over to A.S.I. Bishnu Govind Rao, who investigated the case and submitted charge sheet against the appellant for putting him on trial under Sections 372" and 366/34 of the Indian Penal Code. After submission of the charge sheet, the learned Sub-Divisional Judicial Magistrate took cognizance of the offence and thereafter the case was committed to the Court of Session.

4. After commitment of the case, the appellant along with one Shyam Giri alias Ghanshyam Girl was charged for the offence punishable u/s 366 of the I.P.C. who denied the charge and then both the accused were put on trial but during the pendency of the trial, co accused Shyam Giri alias Ghanshyam Giri absconded as such he was declared absconder and so his trial was separated. After full trial the appellant was convicted by the impugned judgment and was sentenced to undergo rigorous imprisonment for three years.

5. Smt. Rina Sinha, Advocate appearing as Amicus Curiae on behalf of the appellant vehemently assailed the judgment of the trial court and submitted that the learned trial court while holding the appellant guilty for the offence of abduction of his own wife, failed to consider this fact that the alleged victim was in the habit of running away from her matrimonial home and as per evidence available on record, at least on three or four occasions prior to alleged date of occurrence she had fled away from her matrimonial home. The learned Amicus Curiae further submitted that the prosecution has actually been failed to prove its case beyond all reasonable doubt and even the complaint petition on the basis of which this case was instituted was not brought on record and due to non-examination of the I.O., the subsequent statement made by the informant before the police also could not be legally brought on record. So, she submitted that this fact shows that neither the complaint petition nor the subsequent statement of the informant of this case have been legally brought on record and in absence of that, it cannot be held that the prosecution case has been corroborated by the oral evidence adduced on behalf of the prosecution. The learned Advocate submitted- that the non-examination of the Investigating Officer has also caused much prejudice to the appellant.

6. On perusal of the judgment of the trial court it appears that the judgment of the trial court, is solely based on the evidence of the last seen and in this regard the court has placed reliance upon the evidence of P.W.I Pavitri Devi wife of the complainant Jai Narain Giri and the mother of the victim; P.W. 2 Ram Prikshan Mahto; P.W.3 Bechu Giri and P.W.5 Jai Narain Giri (informant). Their evidence shows that they are consistent on the point that the appellant along with other accused had come to the house of the informant just 12-13 days" prior to lodging of the complaint and had taken Bidagiri of the victim and the victim Sumitra Devi had accompanied the appellant, who was her own husband. The independent witnesses, namely, Ram Prikshan Mahto and Bechu Giri, have

corroborated this fact that they had seen the victim Sumitra Devi going with the appellant and other accused persons. Thus, there is sufficient and reliable evidence on record to come to the conclusion that the victim Sumitra Devi was last seen in the company of the appellant and other accused persons and thereafter when the informant visited the house of the appellant his daughter was not found there and no satisfactory explanation was given for her absence by the appellant. Thus, on the basis of the evidence available on record, I have no difficulty in arriving at the conclusion that when the victim Sumitra Devi became traceless she was in custody of the appellant and it was the duty of the appellant to satisfy the court as to what happened to the victim after she was brought from her Naihar to her matrimonial house. It appears from the record that no satisfactory explanation has come from the side of the appellant in this regard. Although the defence has given suggestion that the victim had disappeared from her Naihar but no satisfactory explanation has been given by the defence as to why the appellant, who is her own husband, did not lodge any first information report in this regard. This goes to show that this plea that the victim had disappeared from her parent's house is baseless. In this view of the matter, I am of the opinion that on facts, the prosecution case is well established.

7. It is true that due to non-examination of the Investigating Officer, the first information report and the complaint petition could not be proved but I am of the view that it does not affect the merit of the prosecution case which stands satisfactorily proved from the oral evidence of the witnesses. Moreover, paragraph 5 of the deposition of P.W.5 Jai Narain Giri (informant) shows that he has fully proved the contents of the complaint petition by stating that his lawyer had read over the contents of the complaint petition after the same was written and typed. This evidence of P.W.5 shows that the complaint petition which is the basis of this case has been legally proved and it was mere technicality that it should have been marked exhibit. So, the argument of the learned Amicus Curiae that as the complaint petition has not been marked exhibit, as such there is no prosecution case, is not tenable.

8. In the result, I do not find any merit in this appeal and as such, the same is hereby dismissed.

9. The judgment and order of conviction and sentence passed against the appellant are hereby confirmed. The appellant is on bail, as such his bail bond is cancelled and he is directed to surrender before the trial court at once to serve out the remaining period of sentence failing which the trial court shall take coercive step for surrender of the appellant.