

(2013) 02 PAT CK 0024

In the Patna High Court

Case No : Govt. Appeal (SJ) No. 11 of 2006 and Cr. Revision No. 851 of 2006

The State of Bihar

APPELLANT

Vs

Suresh Ram and Another
 Mahendra Ram Vs The State
of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 34, 366, 366A, 376

Citation : (2013) 2 PLJR 169

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Arun Kumar Arun in 851, Mr. Ranbir Singh, Amicus Curiae in 775 and Mrs. Rina Sinha, Amicus Curiae in 776, for the Appellant; Parmeshwar Mehta in 11, 851, Mr. Binod Bihari Singh in 775 and Mr. S.N. Prasad in 776 for the State, Mr. Arun Kumar Arun for the Informant in 11, 775, 776 and Mr. Pramod Ban Bihari Singh for the O.P. Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Mandhata Singh, J.—Prosecution case initiated on written application (Exhibit-4) of Mahendra Ram (PW-7), in brief, is that on 20.5.2003 the marriage of Suman Kumari daughter of informant Mahendra Ram was solemnized at Bidupur Bazar. In the morning of 21.5.2003 informant found his daughter Soni Kumari aged about 13 years absent from the house. He started to search his daughter to neighbours and relations. In the morning of 24.5.2003, Pinki Kumari (PW-4) daughter of Lakhindra Ram reported the informant that she had seen Soni Kumari in company of Sanjay Ram and Akash Srivastava. From the same day Sanjay Ram and Akash Srivastava were also absconding from their house. Informant went to the house of Sanjay Ram asked whereabouts of Soni Kumari, but he did not reply positively. Informant has claimed that Akash Srivastava and Sanjay Ram were the persons who kidnapped his minor daughter Soni Kumari after persuading her from his residence with intent that she would be compelled

to marry any person or be forced or seduced to illicit intercourse. Initially charge-sheet is submitted in the case against Sanjay Ram and Akash Srivasatava @ Golu Sinha. Trial commenced also against them with framing of the charge, but in course of trial accused respondents namely Suresh Ram and Akhilesh Kumar @ Akhilesh Ram @ Kalu Ram also summoned to face trial alongwith charge-sheeted accused Sanjay Ram and Akash Srivasatava. Trial ended in acquittal of Suresh Ram and Akhilesh Kumar and conviction of Sanjay Ram and Akash Srivasatava. Acquittal of Suresh Ram and Akhilesh Ram is challenged by filing Government Appeal No. 11 of 2006 and Revision No. 851 of 2006 by informant of the case. Conviction of Sanjay Ram and Akash Srivasatava is challenged by filing Criminal Appeal No. 775 of 2006 and 776 of 2006 respectively.

2. In all ten (10) witnesses are examined in the case, they are PW-1 Sanjay Ram, PW-2 Santosh Kumar, PW-3 Munia Devi, PW-4 Pinki Kumari, PW-5 Soni Kumari victim of the case, PW-6 Sanjay Kumar Sinha, Judicial Magistrate, 1st Class, Hajipur, who has recorded the statement of the victim girl u/s 164 of the Cr.P.C., PW-7 Mahendra Ram informant of the case, PW-8 Dr. Sunita Kumari, PW-9 Jugeshwar Yadav Investigating Officer of the case and PW-10 Vishwanath Mahto a formal witness.

3. Defence has also adduced one witness namely Tarachand Das. Documentary evidence on behalf of the prosecution are Exhibit-1 endorsement and signature of the victim girl Soni Kumari on requisition of police for medical examination, Exhibit-2 signature of Soni Kumari on statement u/s 164 of the Cr.P.C. Exhibit-3 statement of Soni Kumari u/s 164 of the Cr.P.C., Exhibit-4 written report of the informant which has been made basis for first information report, Exhibit-5 medical report of Soni Kumari, Exhibit-5/1 supplementary medical examination report, Exhibit-6 X-ray report of Soni Kumari, Exhibit-7 Dental Surgeon's report of Soni Kumari, Exhibit-8 endorsement of Sub-Inspector, Exhibit-9 requisition of the Investigating Officer to Medical Officer, Hajipur Sadar Hospital for examination of victim girl Soni Kumari, Exhibit-10 protest petition filed by the informant against Investigating Officer and Exhibit-11 formal first information report.

4. In the first information report only accused-appellant of Cr. Appeal No. 775 of 2006 and 776 of 2006 Sanjay Ram and Akash Srivastava @ Golu Sinha are named. In the case, all the four accused persons either convicted or acquitted have been tried for the offence u/s 366A/ 34 of the I.P.C. while accused Akash Srivastava @ Golu Sinha is charged for the offence u/s 376 of the I.P.C. also.

5. Now, it is clear that PWs-1 to 5 and 7 are only material witnesses to state taking place of the incident. All these witnesses are stating about disappearing of the victim girl Soni Kumari from her house since the morning of 21.5.2003, but of them PWs-4 and 5 are the eye witnesses in the case. Of them PW-4 to state that victim was called by accused persons from her house and she saw victim going in company of accused persons. On commitment of the rape, victim is the sole witness.

6. On behalf of all the accused persons the common defence is that victim was in love with accused Akash Srivastava @ Golu Sinha. She (victim) joined his company voluntarily and everything happened with her consent, but all have been made accused in the case to explain her voluntary disappearance from her house.

7. Defence of Suresh Ram and Akhilesh Ram respondent of Government Appeal No. 11 of 2006 is that they have not been named by PW-4, who has only appeared to corroborate the kidnapping as an eye witness and there was land dispute in between accused Suresh Ram and family of the victim. Akhilesh Ram was giving help to Suresh Ram in land dispute for their false implication. Paragraphs-3 and 4 of statement of PW-3 mother of the victim is referred. In Paragraph-3, she states that there was dispute in between her husband and Suresh Ram for land and in Paragraph-4 she is stating that accused Akhilesh Ram was helping Suresh Ram in land dispute. Other grounds are discussed by the trial Court for disbelieving their involvement in the incident. So, their acquittal by the trial Court needs no interference.

8. Now, involvement of accused-appellants of Cr. Appeal Nos. 775 of 2006 and 776 of 2006 respectively is to be discussed. On their behalf, it is said that there is no material to involve them for constituting offence u/s 366A of the I.P.C. and against accused-appellant Akash Srivastava u/s 376 of the I.P.C. For offence u/s 366A or kidnapping of a girl and Section 376 of the I.P.C. age of the victim girl is relevant for her consent or no consent, but differently. Consent of a girl or woman for constituting offence u/s 366A of the I.P.C. or kidnapping 18 years of the age is relevant, if she is under 18 years of age consent plays no role rather consent of her guardian plays any role while for the offence u/s 376 of the I.P.C. relevant age is 16 years, sexual inter-course if is committed with the consent of the victim girl or she was so willing under normal circumstance no offence u/s 376 of the I.P.C. is made out. This matter (age) has not been taken seriously by the witnesses even something has appeared in statement of some of the witnesses. No doubt, medical report of doctor is there to state the same. Exhibit-5 is medical report of Soni Kumari issued by PW-8 Dr. Sunita Kumari.

9. PWs-1, 2, 3, 6 and 7 are there to state the age of victim girl about 13 years. PW-6 is Judicial Magistrate, 1st Class, who has recorded statement of the victim girl u/s 164 of the Cr.P.C. and on that basis only he is stating her age 13 years at the time of recording her statement. At the same time, PW-8 Dr. Sunita Kumari is adduced in the case who examined the victim girl after several tests, she is stating the age of victim girl 16-17 years. According to Modi's Medical Jurisprudence there remains two years margin observed by Apex Court also in several decisions but now Rules 2007 framed under Juvenile Justice (Care & Protection) Act having force of a legislation is there, to minimize this difference one year which has already been done in this case. There is no evidence on behalf of defence on this point. So, rightly PW-8 has been opted by the defence on the point of age, being the same age of victim girl above 16 years and less

than 18 years is held.

10. If the same is taken for constituting offence u/s 366A of the I.P.C. or her kidnapping she was consenting party or not is not relevant. Disappearance of the victim girl is not much disputed otherwise also witnesses are there to state that victim girl disappeared. This fact has been supported by the victim herself and one Pinki Kumari (PW-4). PW-5 though in her statement in-chief states that she was taken on threat, but PW-4 is stating that she saw Soni Kumari going with Sanjay Ram and Akash Srivastava in their company, thereafter as by victim girl, she was taken to Hajipur, therefrom to Muzaffarpur, but alone by accused Akash Srivastava there, he kept the victim lady in house of her Mausi and committed rape. Threatening could work following the accused Akash Srivastava, but when she was asked on the point of family members of Akash Srivastava's Mausi in Paragraphs-22 and 23, she states that no family member was present in the house and door of the house was open. Apart from the discrepancy that she came to her house on 23rd and made the version as told by her mother, family members or Investigating Officer of the case, she was again taken to Sonapur to maternal grandmother's house of Akash Srivastava where mother of Akash Srivastava was present and asked Akash Srivastava to leave her to her parents and that was obeyed also. This much of the circumstance clearly shows consent of the parties, but for the kidnapping that will not work as the victim has been observed minor below 18 years at the time of commission of kidnapping or sexual inter-course.

11. The alleged discussed act does not constitute offence u/s 366A of the I.P.C. as it was not an act of inducement. For movement from any place or to do any act with intent that such girl may be or knowing that it was likely that she would be forced or seduced to illicit inter-course with another person. "Inducement" and "another person" is absent in this case, but in similar nature offence u/s 366 of the I.P.C. having similar punishment is there in which kidnapping and abduction for the purpose of marry any person or force to seduce to illicit inter-course is there. Compulsion could play a vital role if victim would have been major, but this much of the allegation is upon accused Akash Srivastava and Sanjay Ram for which they have been convicted also.

12. After concluding that act was consented act something more can be added that no alarm was ever made. A photograph of the victim with accused Akash Srivastava when was shown, she admitted that yes photograph was taken in studio giving an unacceptable explanation that on way her home while was taken by accused Akash Srivastava. In Paragraph-11, PW-3 states that while Soni Kumari was taken to Court she told everything about case that Sanjay Ram, Akash Srivastava and Akhilesh Ram were named in the first information report. Prosecution case is that Soni Kumari was kept in police station for three days and her statement was recorded on 27.5.2003 before coming her home. In Paragraph-7, she states that photograph was taken on 23.5.2003 while was on way her home taken by Akash Srivastava. In Paragraph-27, she states that she

did not go to police station and Paragraph-28, she clearly states that she came to her home by tempo. Further, it is clear that there was neither any resistance at the house of Akash Srivastava's mausi nor at the house of his Nani nor kidnapping or anything was reported to any of the members of both the family. So, relation of sexual inter-course if really happened then also no offence is made out u/s 376 of the I.P.C. Accused Akash Srivastava remained in custody since 26.5.2003 to 22.5.2008 while Sanjay Ram remained in 26.5.2003 to 18.10.2006.

13. On the observation made above evidence on record and circumstances of the case, Cr. Appeal No. 776 of 2006 is allowed in part. Cr. Appeal No. 775 of 2006, Cr. Revision No. 851 of 2006 and Government Appeal No. 11 of 2006 are dismissed, but Cr. Appeal No. 775 of 2006 modified on point of sentence. Acquittal of Suresh Ram and Akhilesh Ram is affirmed while that of Sanjay Ram and Akash Srivastava for the offence u/s 366A of the I.P.C. is converted into one u/s 366 of the I.P.C. and conviction and sentence of Akash Srivastava for the offence u/s 376 of the I.P.C. is set aside. On the point of sentence State could not succeed to place any circumstance under which accused Sanjay Ram and Akash Srivastava may be sentenced for the period more than undergone by them. So, their sentence is reduced to period already undergone for the offence u/s 366 of the I.P.C.