
(2011) 09 JH CK 0054

Jharkhand High Court

Case No: Criminal Appeal No. 654 of 2002

Surajdeo Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 13, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 363, 365, 366A

Citation: (2011) 4 JCR 385

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.K. Merathia, J.

Both these appeals are directed against the judgment of conviction and order of sentence dated 3.10.2002, passed by learned Xth Additional Sessions Judge, Dhanbad, in Sessions Trial Case No. 300/90, convicting the appellants under Sections 363, 365 & 366-A of the Indian Penal Code and sentencing them to undergo R.I. for four years u/s 363, IPC; five years u/s 365, IPC and five years u/s 366-A, IPC, though all the sentences were to run concurrently.

2. The prosecution case in short is that the informant-Shyam Lal lodged a fardbeyan before the police on 23.9.1988 inter alia alleging that his daughter-Janki Kumari (PW 7), aged about 15 years, went to see mela on 17.9.1988 but she did not return and from then he and his family members were searching her, during which, it was learnt that the appellants-Samay Lal Jaiswara, Surajdeo Singh and accused Indu Rai who were also working in the same colliery have abducted Janki with a bad intention and she has been kept confined. It was also learnt that appellants had love affair with Janki and accused Indu Rai has helped them. The appellants were also absconding from their duty.

3. Learned counsel for the appellants assailed the impugned judgment on various grounds. It is submitted that independent witnesses have turned hostile and the conviction is based on the interested witnesses and that there is major contradiction in the statement of Janki made before the Magistrate u/s 164, Cr.P.C. and in the Court and that the appellants have suffered this prosecution since 1988. It is further submitted that the trial Court has not considered the materials on record properly.

4. On the other hand, Mr. Tapas Rai, learned counsel for the State, in both the cases, supported the impugned judgment.

5. It appears from the FIR itself that the informant, father of Janki, suspected love affairs between her and the appellant-Samay Lal Jaiswal. Janki was recovered from the house of Samay Lal Jaiswara on 26.9.1988 i.e. after about 9 days. She gave statement u/s 164, Cr.P.C. before the Magistrate inter alia saying that the accused persons came to her house and took her to some other place and kept her there till last night where appellant Samay Lal Jaiswara remained and appellant Surajdeo Singh, another accused went away. Appellant- Samay Lal was living there from before and he wanted to marry her. She knew him for the last two years. Appellant-Surajdeo Singh and Indu Rai abducted her on false pretext. She did not want to live with them. Samay Lal used to tell her to go to Deoghar for marriage. He kept her properly. It is important to note that when Janki was examined as PW 7 in this case, she made major contradictions from her aforesaid statement. She inter alia said that when she went towards jungle to ease herself, all the accused persons were present. Appellant-Surajdeo Singh and accused Indu Rai gagged her mouth and lifted her saying that she will be married with the appellant-Samay Lal. She was threatened with dire consequences. She was taken to Railway Station. She was kept in the house of Samay Lal from 17th to 26th (September. 1988) where appellant Samay Lal used to commit rape on her. It may be noted here that this part of rape was developed in evidence. She further said that appellant-Samay Lal took her to a temple and put vermilion on her head. The Magistrate has not been examined in this case.

6. The learned trial Court also observed that there were material contradictions in the statement of Janki u/s 164, Cr.P.C. and her statement in the Court as PW 7. The I.O. has not been examined in this case. Janki did not say as to whether she tried to escape from the clutches of the accused persons when she was taken by them to the Railway Station and then to the house of the appellant-Samay Lal and when she was kept there for about 9 days. Even as per the father of Janki (PW 1), there was love affair between the appellant-Samay Lal and Janki.

7. After hearing the parties and going through the records carefully, in my opinion, the appellants deserve benefits of doubt as the prosecution has not proved its case beyond all reasonable doubts.

8. In the result, these appeal are allowed. The impugned judgment of conviction and order of sentence dated 3.10.2002, passed by learned Xth Additional Sessions Judge, Dhanbad, in Sessions Trial Case No. 300/90, is set aside. The appellants are discharged from their bail bonds.