
(2009) 08 JH CK 0028

Jharkhand High Court

Case No: Criminal Appeal No. 267 of 2001

Tarun Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Aug. 18, 2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 164#Penal Code, 1860 (IPC) â€” Section 120B, 34, 366A, 376

Citation: (2009) 08 JH CK 0028

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Advocate: Kaushik Sarkhel, for the Appellant; A.B. Mahato, APP, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment of conviction dated 22.6.2001 and sentence dated 26.6.2001 passed by

Sri Prabodh Ranjan Das, IIIrd Additional Judicial Commissioner, Ranchi in Sessions Trial No. 220 of 1997, by which judgment he found the

appellant, Tarun Kumar guilty u/s 366A of the Indian Penal Code and u/s 376 of the Indian Penal Code and sentenced him to undergo R.I. for 3

years u/s 366A of the Indian Penal Code with a fine of Rs. 1,000/- and in default of fine the appellant further sentenced to undergo 2 months. He

also sentenced the appellant to undergo R.I. for 7 years with a fine of Rs. 2500/- u/s 376 of the Indian Penal Code and in default of fine the

appellant further sentenced to undergo 3 months. However, he directed both the sentences shall run concurrently.

2. The prosecution case was started on the basis of a written report filed by Lakhbir Singh-P.W.2 on 6.11.1996 stating therein that his niece,

Gurprit Kaur daughter of Sukhbir Singh, who is a student of Class-Xth of Sacred Heart School, Holundu, had gone for tuition to the house of her

friend at Sector-II, Dhurwa and used to return by Mini Bus. Her mother used to go to her friend's house for bringing her. On 5.11.1996 the son of

the informant Mukund Singh received a telephonic message that niece of the informant was being taken to Dhanbad and her mother will reach the

house after sometime at 8.15 P.M., and disclosed that while her daughter was coming from tuition and reached near Russian Hostel along with her

mother the Mini Bus of model 407 bearing registration No. 14P 0908 was parked near the Russian Hostel. It is further said that both the mother

and daughter boarded on the said bus and thereafter the bus proceeded about 10 steps, but subsequently, son of the owner of the Bus, namely,

Tarun Kumar said that the Bus will not proceed further and asked them to get down. Thereafter the conductor of the Bus, namely, Manish also

asked them to get down. As soon as the mother got down from the bus and her daughter was trying to get down from the bus, then the said Mini

Bus started running in high speed and thus the accused-appellant kidnapped his niece. He further stated that his niece is aged about 16 years. He

further stated that the accused-appellant has kidnapped his niece with an intention to commit rape or marry with her by force.

3. On the basis of the said written report the police registered a case u/s 366A of the Indian Penal Code and after investigation, police submitted

charge-sheet u/s 366A/376/120B/34 of the Indian Penal Code.

4. In course of trial, the prosecution examined 10 witnesses, including victim girl and after considering the evidences on record and after hearing

both the parties, the learned trial court convicted the accused-appellant, Tarun Kumar.

5. It is submitted by the learned Counsel for the appellant that from the evidence of the victim girl-P.W.8 and from the evidence of P.W.7, Deep

Kaur, mother of the victim girl, it appears that the victim girl had love affairs with the accused-appellant. She on her will went away with the

appellant and stayed with him for two days at various places and hence the conviction of the appellant under Sections 366A and 376 is bad in law

and fit to be set aside. He has further submitted that the victim girl at the time of occurrence was major and hence the conviction is bad in law and

fit to be set aside. Learned Counsel for the appellant in support of his argument has relied upon a decision report in Jang Singh and Others Vs.

State of Rajasthan, .

6. On the other hand, learned Counsel for the State opposed the prayer and submitted that from the evidence of P.W.7, Deep Kaur and P.W.8,

Gurprit Kaur, it appears that the appellant was known to P.W.7 and P.W.8 from before, but they had clearly stated that on the date of occurrence

they boarded the Bus of the accused-appellant, Tarun Kumar who asked the victim to marry with him by force and when she refused to marry him

then he asked the victim girl and her mother to get down from the bus and while victim girl was getting down from the bus then the bus driver

speedily took away the bus and thereafter he kidnapped her and also raped her near Petrol Pump and subsequently dropped her at Ranchi Civil

Court. The prosecution has completely proved the charges against the accused-appellant under Sections 366A and 376 of the Indian Penal Code

and he has rightly been convicted.

7. After hearing both the parties and going through the evidences on record, I find that the prosecution has examined 10 witnesses. P.W.1 is Dr.

Rita Lal, who examined the victim girl, Gurprit Kaur, P.W.2 is Lakhbir Singh, the informant, P.W.3 is Sukhbir Singh father of the victim girl,

P.W.4, Trilok Singh, P.W.5 is Birendra Kumar Gupta, P.W.6 is Daljit Kaur, P.W.7 is Deep Kaur, the mother of the prosecutrix, P.W.8 is Gurprit

Kaur, the victim girl, P.W.9 is Ram Vinod Singh, the then Munsif, Latehar, who recorded the statement of the victim girl u/s 164 Cr.P.C. and

P.W.10 is Jai Ram Singh, the Investigating Officer of this case.

8. The P.W.2, Lakhbir Singh, supported his F.I.R. in Court and stated that on 5.11.96 his niece, Gurprit Kaur daughter of Sukhbir Singh, who is a

student of Class-Xth of Sacred Heart School, had gone for tuition to the house of her friend at Sector-II, Dhurwa and used to return by Mini Bus.

Her mother used to go with her to her friend's house for brining her. When, after tuition her daughter was coming from tuition and reached near

Russian Hostel along with her mother, the Mini Bus of model 407 bearing registration No. 14P 0908 was parked near the Russian Hostel, then

they boarded the bus. Thereafter, the bus proceeded about 10 steps, but subsequently Khalasi and driver of the said Bus told that the Bus will not

proceed further and asked them to get down. As soon as the mother got down from the bus and her daughter was trying to get down from the bus,

then the said Mini Bus started running in high speed. Subsequently, at 7.15 P.M. on telephone some body informed his son, Mukund Singh that he

is taking Gurprit (victim) to Dhanbad and her mother will reach the house after sometime at 8.15 P.M., she stated as to why the accused-appellant

kidnapped the Gurprit (victim). Thereafter she along with her husband went to the house of accused-appellant, Tarun Kumar and told about the

occurrence. Thereafter the informant and others started searching for her daughter. When father of the Tarun Kumar had failed to do so then he

lodged the F.I.R. In his cross-examination, he stated that his house at Tipudana and the house of accused is also at Tipudana. He is living with his

family and family of his brother since last 10 years at Tipudana. He further stated that on 13.11.1996 the girl returned to Ranchi and he met with

her in Court, then took the girl to Sr. Superintendent of Police, Ranchi where she gave her statement. He denied that he had given any instruction

to the girl before her examination.

9. The next important witness is P.W.7, Dip Kaur, mother of the victim girl. She has clearly stated in Court that on 5.11.1996 she along with her

daughter (victim girl) reached near Russian Hostel while returning from tuition of her daughter they found that Kamla Bus bearing registration No.

14P 0908 was parked near the Russian Hostel and asked them to board on the bus, when they did not board on the bus then the owner"s son told

that he has to talk with her daughter. Thereafter, they boarded on the bus. Then, Tarun asked her daughter as to whether she would marry him to

which her daughter refused to do so. At this the accused-appellant became furious and asked them to get down from the bus. She got down from

the bus and while her daughter was trying to get down from the bus the bus driver speedily took away the bus and the accused went towards Birsa

Chowk. Then she was informed by her husband that he informed on phone that he is taking Guruprit to Dhanbad and her husband went to the

house of Tarun Kumar in search of his daughter. Her daughter was aged about 16 years and student of Class Xth. She identified the accused in

Court. In her cross-examination, she stated that she is a teacher of Mount Carmel School. The name of her daughter"s friend is Rashika. She

cannot teach her daughter physics and math as she is a teacher of Geology. She stated in para 11 in her cross-examination that after occurrence no

other bus was available there she went on foot to Birsa Chowk, where a truck gave her lift to Tipudana, causing delay of half an hour in reaching

her house. She also stated that the house of accused is at the distance of 1/2 kilometer from her house. She admitted that the accused used to visit

her house since he was friend of her nephew, but she denied that she ever wanted to marry her daughter with the accused. She further stated that

after kidnapping of the girl at Birsa Chowk she did not go to her friend"s house, Rahika, but instead look for some vehicle to inform her house and

family members. At para 52 of her cross-examination, she clearly stated that the driver of the Bus, Manish has nothing to do with the accused. He

only obeyed the direction of the accused.

10. P.W.8 is Gurprit Kaur. She is the victim girl has also supported the prosecution case and stated in Court that on the date of occurrence i.e. on

5.11.1996 when in the evening she had gone for tuition to Sector-II, Dhurwa and after tuition she was returning with her mother. As soon as she

reached near the Russian Hostel then, they saw Kamla Bus bearing registration No. 14P 0908 was parked near the Russian Hostel. Then, the

accused, Tarun Kumar, who is the son of owner of the bus asked them to board the bus. She also stated that they will not board on the bus then

he will take them by force on the bus. Hence she boarded on the bus. Then the accused-appellant, Tarun Kumar asked her to marry with him and

when she refused to marry him then he asked them to get down from the bus. The mother of the victim girl got down from the bus and while victim

girl was getting down from the bus after taking her project report then on the direction of Tarun the bus driver speedily took away the bus then she

raised "hullah". The accused Tarun Kumar increased the volume of the radio of the bus so that nobody could hear her shout and closed the

window of the bus. Thereafter, the accused, Tarun Kumar caught hold of her and took her of the back side of the bus where he committed rape

upon her. On repeated hullah he left. Thereafter, he took her to Gaya, Mandar, Mania village and Buxer and other places and on 13.11.1996 he

dropped her in the Ranchi Civil Court. In her cross-examination, she stated that while coming from Ranchi at some Petrol Pump in the night

accused, Tarun Kumar committed rape. She has further said that she has given her statement u/s 164 Cr.P.C. and to the Sr. Superintendent of

Police, Ranchi and also to Dy. S.P. She identified her signature in her own 164 Cr. P. C. statement and stated that the statement was read over to

her by the Magistrate. Thereafter, finding is correct, she signed the same. At para 13, in her cross-examination, she stated that the accused-

appellant was friend of her cousin brother. He also made pressure upon her to marry, but she refused. At para 16 she stated that the accused-

appellant, Tarun Kumar had given threats and by force she boarded the bus. At para 21 she stated that she was not in visiting term to the house of

accused, Tarun Kumar. At para 25 she stated that while she was kidnapped by the accused, Tarun Kumar, who stopped the bus at some studio

and got some photograph with her. She does not remember time, date and place. She had not given photograph to accused-appellant. At para 23,

she stated that from Civil Court her father took her to the Senior Superintendent of Police, then she went to her house. At para 51 she stated that

thereafter she gave statement to Dy. S.P. also. At para 79 she stated that the conductor of the bus, namely, Manish had nothing to do with

kidnapping, it was done at the instance of the accused, Tarun Kumar.

11. P.W.3, Sukhbir Singh, father of the prosecutrix, has also stated that on 5.11.96, his daughter, Gurprit Kaur had gone for her tuition to Sector-

II, Dhurwa and she was coming from tuition with her mother. At 7.15 P.M. a telephonic message was received by his nephew, Mukund Singh that

he is taking his daughter to Dhanbad and her mother will reach the house after sometime at 8.15 P.M., he became nervous on hearing this. When,

his wife came then she narrated that they boarded the Mini Bus of model 407 bearing registration No. 14P 0908 the accused-appellant, Tarun,

who is owner asked them to get down from the bus and her daughter was trying to get down from the bus, then the said Mini Bus started running

in high speed and thus the accused-appellant kidnapped her. Thereafter, he along with his wife went to the house of accused-appellant, Tarun

Kumar and told about the occurrence to Tarun Kumar's father and mother. Thereafter, the father and others stalled searching for her daughter.

When father of the Tarun Kumar failed to locate him then he lodged the F.I.R. He further stated that his daughter, Gurprit Kaur, who is a student

of Class-Xth of Scared Heart School, Holondu. In para 4, he stated that his statement is based on the information received by him from his wife-

P.W.7.

12. P.W.1 is Dr. Rita La, who examined the victim girl and found the victim girl was aged about 15-17 years on the basis of X-ray report and after

her examination she stated that in her opinion since the victim girl has been examined after long delay, it is difficult to say whether she was raped or

not?

13. P.W.9, Ram Vinod Singh. He recorded the statement of the victim u/s 164 Cr. P. C. He proved her statement u/s 164 Cr. P. C., which is as

Ext.-3/1

14. P.W.10, Jairam Singh, Investigating Officer of the case, has also been examined in this case. He stated that on 6.11.96 the informant, Lakhbir

Singh gave written statement in the kidnapping of Gurprit Kaur daughter of Sukhbir Singh. He gave detailed written report. On the basis of said

written report a case u/s 366A of the Indian Penal Code was registered at the police station and formal F.I.R. was drawn, which was proved as

Annexure-4 and as per the order of the Officer-in-charge he took over the investigation of the case. He inspected the place of occurrence, which

is near Jagarnathpur Hatia Pucca Road near Russian Hostel where a Mini Bus of model 407 bearing registration No. 14P 0908 was standing from

where the girl was kidnapped and the girl came to the house of the informant then, he recorded her statement and she stated that she was

kidnapped and then raped by the accused. She also presented the cloth that she was wearing. He proved seizure-list as Ext.3/2. Then, he sent the

girl for medical examination. Thereafter, he sent the girl to the Court of Chief Judicial Magistrate for recording her statement u/s 164 Cr. P. C.,

seized the Mini Bus of model 407 bearing registration No. 14P 0908 and proved the seizure of the said bus as Ext.4/2. He obtained the medical

report of the victim girl. The case was surrendered in Court on 3.1.1997. He sent the cloth of the victim for chemical examination and after obtaining

the supervision note Submitted charge-sheet in the case para 36 of his cross-examination, he stated that during investigation the victim girl (sic) to

him that she had given her statement to the Sr. Superintendent of Police, Ranchi. In para 37 he stated that after kidnapping the victim girl the

accused had taken her to Gaya, Mandar, Mania Village, Buxar and Sasaram.

15. Thus, after going through the evidences of the prosecution case, I find that the prosecution has proved the charges u/s 376 of the India Penal

Code and also u/s 366A of the Indian Penal Code against the accused, Tarun Kumar beyond reasonable doubt. Learned Counsel for the appellant

has submitted that there were witnesses available near the bus stand and their non-examination, has made the case doubtful, but from the

evidences, as discussed above, I find that as per the statements of the victim girl (P.W.8) and mother of the victim girl (P.W.7) when victim girl and

her mother boarded the bus he took away the bus from the bus stand and when the girl refused to marry to him then, at a lonely place he asked

them to get down from the bus and after the mother got down from the bus he kidnapped the girl and left for Gaya, Buxer and other places, so

mere is no any witness at the time of kidnapping except her mother.

16. I find no force in the submission of the learned Counsel for the appellant. Learned Counsel for the appellant submitted that the victim girl was

having love affairs with the accused and she was major at the time of occurrence, but from the evidences, as discussed above, it is clear that doctor

found the victim girl was aged about 15-17 years. The Magistrate, who examined the victim girl u/s 164 Cr. P. C., found the victim girl was aged

about 16 years even the Court, who examined the victim girl as P.W.8 found her age about 17 years on the date of examination.

17. Thus, on the date of occurrence i.e. 5.11.1996 admittedly, the victim girl was aged about 15 years and odd. Her mother, in her evidence

stated that daughter was aged about 16 years. In that view of the matter, I find the victim girl was about 15-16 years on the date of occurrence

and moreover there is no evidence that there was any love affairs between the prosecutrix and the accused-appellant. They were only known to

each other as neighbour and the accused used to visit the victim's house for talking to his friend, who is her cousin brother and he misused the friend-ship by kidnapping and committed rape upon her, which is a heinous crime committed by him on the sister of his own friend.

18. I find that the charges leveled against the appellant, has been proved beyond reasonable doubt and he was rightly convicted by the learned trial

court as such I find no merit in this appeal and the same is accordingly dismissed.

19. The appellant is on bail. His bail bond is hereby cancelled and learned court below is directed to issue warrant of arrest for arresting the

appellant forthwith.