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(2011) CriLJ 1601 : (2011) 1 JLJR 261

Jharkhand High Court

Case No: Criminal Appeal No. 420 of 2002

Ashok Mahto and Punit Mahto	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 365, 366A, 376

Citation: (2011) CriLJ 1601 : (2011) 1 JLJR 261

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.
No body appears on behalf of the Appellants on repeated call. On the request of the Court Mr. Purnendu Sharan argued the case on behalf of the Appellants as amicus curie.

2. This appeal is directed against the judgment dated 1.6.2002 and order of sentence dated 6.6.2002 passed by Shri Binay Kumar Sahay, learned Additional Sessions Judge-XIII, Dhanbad in Sessions Trial No. 243 of 1999, by which judgment he found both the Appellants guilty under Sections 366A and 376/34 of the Indian Penal Code and acquitted them from the charges u/s 376 of the Indian Penal Code and sentenced them to R.I. for 7 years each u/s 366A of the Indian Penal Code and also to pay a fine of Rs. 1,000/- each and in default to further undergo R.I. for one year.

3. It is submitted by the learned Counsel for the Appellants as amicus curie that it will appear that the occurrence took place on 14.4.98 on which date the informant''s daughter, namely, Sangita Kumari had gone to attend her school at BIT Sindri, but she did not return, hence F.I.R. was lodged on 3.6.1998 i.e. after a long delay of more than one and half months. He has further submitted that even the victim girl admitted in her

statement that she had love affair with the accused-Appellant-1, Ashok Mahto and they have compromised the matter, in spite of that finding of conviction has been passed. In that view of the matter, the finding of conviction and sentence has been passed by Additional Sessions Judge-XIII, Dhanbad, is bad in law and only fit to be set aside.

4. On the other hand, learned Counsel for the State has submitted that it will appear that although there was some love affair, but it is admitted case that the victim girl was a minor aged about 13 years and both the Appellants had conspired in kidnapping the victim girl and performing marriage with Appellant No. 1, Ashok Mahto and as such both of them have rightly been convicted u/s 366A of the Indian Penal Code and it requires no interference by this Court.

5. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by the informant, Dukhi Prasad Gupta on 3.6.98 at 9.30 Hrs. stating therein that his minor daughter, Sangita Kumari aged about 13 years had gone to attend her school at BIT Sindri on 14.4.98, but she did not return, hence a Sanha was lodged by him on 15.4.98. Even after four days she did not return, on inquiry, he came to know that his neighbour, Punit Mahto and his son Ashok Mahto had conspired and she left the house with Ashok Mahto on 14.4.98 and witnesses had seen her at the Sindri Railway Station on 14.4.98 along with Ashok Mahto son of Punit Mahto. He further alleged that both the accused-Appellants with common intention had kidnapped his daughter for illegal purpose and forced marriage.

6. On the basis of the said F.I.R. police registered a case u/s 366/365/34 of the Indian Penal Code being Sindri (Goshala) P. S. Case No. 59/98 and after investigation submitted charge-sheet in the case.

7. Since, the case was exclusively triable by a Court of Sessions, the same was committed to the Court of Sessions and subsequently trial was held by the Additional Sessions Judge, who found the Appellants guilty as aforesaid.

8. It appears that in course of trial, the prosecution has examined 7 witnesses. P.W.1, Kamla Devi. P.W.2, Dukhi Prasad Gupta. P.W.3, Sangita Kumari is the victim girl. P.W.4, Radha Shyam Singh. P.W.5, Dr. Laxmi Pandey, who examined the victim, Sangita Kumari. P.W.6, Bhuneshwar Singh and P.W.7, Gorakh Nath Singh is the Investigating Officer of the case.

9. P.W. 1, Kamla Devi is the mother of the victim. She has stated that her daughter had gone to attend her school at BIT Sindri on 14.4.98, aged about 13/14 years, but she did not return they started inquiry about her. Subsequently, one Radhe Shyam Singh, the neighbour of the informant, informed that her daughter had been seen with the accused-Appellant No. 1, Ashok Mahto at the Sindri Railway Station. Then, they talked to Punit Mahto, father of Ashok Mahto, who stated that she will come back. Then, they informed the police station and lodged a Sanha. When, she did not return, even after four

days then F.I.R. was lodged. Subsequently, the girl was recovered and she got her from the Court of Chief Judicial Magistrate. She further alleged that the accused had taken away her minor daughter for the purpose of illegal marriage.

In her cross-examination, she stated that she had not seen the accused, Ashok Mahto taking away her daughter. She also admitted at para 10 that her daughter after the recovery gave statement that she has married with Ashok Mahto and also admitted in para 11 that she is residing in her house.

10. P.W.2, Dukhi Prasad Gupta, informant of this case and father of the victim has also stated that his minor daughter aged about 13/14 years, had gone to attend her school at B.I.T. Sindri on 14.4.98 but she did not return. He made an inquiry then one Radhe Shyam Singh, the neighbour of the informant told him that she was seen with Ashok Mahto at the Sindri Railway Station. Then, he made complaint to Punit Mahto, father of Ashok Mahto, who stated that she will come back. Then, he made no complaint to the police and only he lodged a Sanha. But, when she did not return even after one and half months then he lodged F.I.R on 3.6.98. He proved his signature on the Fardbeyan as Ext.-A on 27.8.88. He received his daughter by the order of the Chief Judicial Magistrate. He identified the accused in Court.

At para 7, In his cross-examination, he has stated that he had written in his F.I.R. that he thought that his daughter has left with some of her friends and she will come back. He further stated, in his cross-examination, that he had not seen the accused-Appellant Ashok Mahto taking away his daughter.

11. P.W.3, Sangita Kumari is the victim girl she stated in her statement in Court on 14.4.98 that she left for her school at 10 a.m. In her school the accused, Ashok Mahto asked her to come along with him in order to see Dhanbad. She did not become ready upon which accused Ashok Mahto threatened him to kill her. Thereafter accused Ashok Mahto forcibly took her to Sindri Station and thereafter brought her to Dhanbad. Thereafter he took her to Sonepur to aunt"s house. Thereafter the accused Ashok Mahto took her to Delhi and always committed rape on her. After two months the accused, Ashok Mahto brought her to Dhandbad Court. She was medically examined.

In her cross-examination, she stated that the. accused, Ashok Mahto had not taken her daughter for any bad intention of marriage and they have compromised the matter even her parents signed the compromise.

12. P.W.4, Radha Shyam Singh has stated that he informed Dukhi Prasad Gupta that he had seen his daughter Sangeeta with accused Ashok Mahto at Sindri Railway Station.

13. P.W.5, Dr. Laxmi Pandey, who proved the medical report as Ext.-2. According to the assessment of the doctor the victim girl was aged about 17 years.

14. P.W.6, Bhuneshwar Singh, who proved the formal F.I.R. as Ext-1/1.

15. P.W.7, Gorakh Nath Singh, A.S.I, who proved the investigation and after investigation he submitted charge-sheet.

16. Thus, after going through the evidences, I find that it appears from the evidence of P. Ws. 1, 2 & 3, mother, father and victim girl that the accused Ashok Mahto, who was the neighbour of the victim and they were in friendly term and also getting education in the same school. She also stated that no force was applied to her and according to the evidence of P.W.4, Radha Shyam Singh he has very clearly stated, in his cross-examination, that he saw that Sangeeta Kumari with the accused, Ashok Mahto at the Sindri Railway Station, but he did not ask anything because there was no reason to ask anything as she was going with the accused on her own will and there was no impression that she is being kidnapped or she is taken by force, which shows that she voluntarily left with the accused Ashok Mahto. The victim also admitted, in her cross examination that the accused had no bad intention nor he has committed rape upon her and she has compromised the matter also with consent of her parents. The doctor-P.W.5 also never stated that rape was committed upon her. In that view of the matter, the victim girl was in friendly term with the accused left with him on her own sweet will. Although, since the victim was a minor girl, aged about 13/14 years as has been found by the Court even the doctor has found aged about 17 years. Hence, although a case of kidnapping u/s 366A of the Indian Penal Code is made out, but there is no malafide intention of kidnapping on the part of the accused-Appellants.

17. In that view of the matter, the Appellants are given benefit of doubt and both the Appellants are acquitted from the charges leveled against them.

18. In the result, the finding of conviction dated 1.6.2002 and order of sentence dated 6.6.2002 passed by Shri Binay Kumar Sahay, learned Additional Sessions Judge-XIII, Dhanbad in Sessions Trial No. 243 of 1999, is set aside. The appeal is allowed.

19. The Appellants are on bail, they are discharged from the bondage of their bail bond.