

(2010) 10 JH CK 0008

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 82 of 2003

Mantu @ Mantu Kumar Paswan

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Oct. 7, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 363, 366, 366A, 376

Citation: (2011) 2 Crimes 97 : (2011) 1 JCR 406 : (2011) 7 RCR(Criminal) : 608(2011) 1 LJLR 197

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pradeep Kumar, J.

Heard the learned Counsel for the Appellant and the learned Counsel for the State.

2. The instant appeal is directed against the judgment of conviction dated 19.12.2002 and order of sentence dated 24.12.2002 passed in S.T. No. 363 of 1994 by Shri Janak Kumar Nath Tiwary. 11th Additional Judicial Commissioner, Ranchi. by which he found the Appellant, Mantu @ Mantu Kumar Paswan guilty u/s 366 of the Indian Penal Code and sentenced him R.I. for seven years u/s 366 of the Indian Penal Code.

3. It is submitted by the learned Counsel for the Appellant that there is no evidence of kidnapping the victim girl. She herself stated that she had gone with the Appellant on her own free will. He did not force her and subsequently, she was sent by inmates of the house to the police station, when the case was lodged. He has further argued that the medical report shows that the victim girl was not a minor. According to the medical report, doctor assessed her age as 17-18 years and as such the conviction u/s 366 of the Indian Penal Code is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the State opposed the prayer and submitted that it is apparent from the evidence of the prosecutrix that she was taken by force by the accused to his friend's house where she was confined and not allowed to go outside the house. In that view of the matter, trial Court has rightly convicted the Appellant. Moreover, the Court assessed the age of the victim about 15 years and her mother also stated that victim girl was aged about 13 to 14 years, as such, she was a minor girl.

5. After hearing both the parties and going through the evidence on record, I find that the prosecution case was started on the basis of fardbeyan given by the informant Sarda Devi (PW 2) on 21.8.1992 stating therein that her daughter Parwati Kumari aged about 13-14 years was a student of class VIII in Ram Lakhan Singh Yadav School, Kokar. On 18.8.1992, she had gone to the school and did not return home till evening. Then, the informant went to the school where she knew that her daughter had left the school before the recess. Thereafter, she searched her here and there, but could not trace her. She informed the police station of her missing. On 21.8.1992. she came to know that one Suraj Singh and Mantu had forcibly kidnapped her minor daughter with bad intention.

6. On the basis of the said fardbeyan, police registered a case under Sections 363 and 366-A of the Indian Penal Code and after investigation, police submitted charge-sheet in the case under Sections 363, 366-A and 376 of the Indian Penal Code. Since, the case was exclusively triable by the Court of Sessions, after taking cognizance learned Chief Judicial Magistrate, committed the case to the Court of Sessions and subsequently, the case was tried by learned 11th Additional Judicial Commissioner, Ranchi, who found the Appellant guilty u/s 366 of the Indian Penal Code.

7. It appears that in the course of the trial, the prosecution has examined as many as Five witnesses.

PW 1. Parwati Kumari is the victim girl.

PW 2. Sarda Devi, is the informant of the case and the mother of the victim girl.

PW 3. Davendra Jha, teacher of the school where victim girl studied.

PW 4. Dr. Reeta Lal is a doctor.

PW 5. Nageshwar Ram. is a formal witness.

Defence has also examined as many as two witnesses.

DW 1, Pramod Kumar.

DW 2, Rajesh Ram.

PW 1 Parwati Kumari, the victim girl, stated in Court that on 18.8.1992 when she was returning from her school and arrived near her house, she met Mantu on the way

and Mantu asked her to write a letter to a girl Pushpa by name. On her refusal Mantu took her to the house of his friend. Where she was kept for about two to four days. When the accused knew about the lodging the FIR in the police station, sent her to the police station with an unknown person. Thereafter, she was produced before a Magistrate to give her statement u/s 164 of the Code of Criminal Procedure. She proved her signature as Ext. 1. In cross-examination, she stated that she is aged about 15-16 years. She had not gone with Mantu of her own free will. She also stated that she did not raise any alarm and also did not make any objection. Thereafter, she stated that she cannot name any of the children of the family of the house in which she was confined. She also stated that though the accused had not locked her in a room, but she was not permitted to go out during day hour.

PW 2 Sarda Devi, is the informant of the case and the mother of the victim girl, has supported the prosecution case and stated that few year back her daughter did not return from school and when she searched for her and when there was no clue about her then she lodged a case in the Sadar Police Station and girl was recovered. She also stated that she was taken by Mantu on the point of dagger

PW 3 Devendra Jha, teacher of the school where victim girl studied, is a formal witness.

PW 4, Dr Reeta Lal is a doctor, who examined the victim girl on 24.8.1992, found that no mark of injury on her private part or over any where on her body, but found that there was sign of recent sexual intercourse and the victim is below 18 years of age.

PW 5, Nageshwar Ram, is a formal witness.

8. Thus, considering the facts and circumstances of the case and after going through the material on record, I find that although the victim girl admitted in her evidence that she did not make hulla and she stated that Petitioner took her to the house of his friend, but she did not raise any alarm, but is as an admitted case that she was taken by force and she was not allowed to go outside the house. In that view of the matter, I confirm the finding of conviction u/s 366 of the Indian Penal Code, I find that since the Appellant and victim, both were friends and taking education in the same school and only with a view to persuade her friend, she was taken to his friend house. In that view of the matter, since Appellant has already remained in custody for about four months, therefore, the sentence against the Appellant is modified and reduced to the extent of the period of imprisonment i.e. about four months, which the Appellant has already undergone during trial, since he has sufficiently been punished. In view of the fact that the case is pending since 1992 and the Appellant has also undergone imprisonment during the trial and appeal for long time.

9. With the aforesaid alteration in the sentence, the appeal is dismissed. Since, the Appellant is on bail, he is released from the bondage of bail.