

(2011) 12 PAT CK 0065

Patna High Court

Case No: Criminal Appeal (SJ) No. 60 of 1999

Mrs. Meera Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Dec. 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 164, 368, 372, 373

Hon'ble Judges: Gopal Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Gopal Prasad, J.

Heard learned counsel for the appellant and the State.

2. The appellant has been convicted under Sections 368 and 373 of the Penal Code and sentenced to undergo rigorous imprisonment for eight years for offence u/s 368 of the Penal Code and eight years for offence u/s 373 of the Penal Code.

3. The prosecution case, as alleged by the informant, Gita Devi (not examined) that about two and half months ago she went to Daltonganj More for selling vegetables where a person in jeep came to purchase vegetables and asked her to accompany as he will keep her as a daughter and he has no female member in the family. Even though she refused, she was forcibly taken on jeep and brought and kept in the house of Meera Devi, who is a dancer. At the instance of Meera Devi she was forced to have illicit intercourse with other persons and even the said person, Ram Chandra Pankaj, who had brought her on jeep, also committed rape on her person and Meera Devi and said Ram Chandra Pankaj arranged for her sale for rupees twenty thousand.

4. After the fardbeyan of the informant, the investigation proceeded and charge sheet submitted.

5. However, during the trial the victim was not examined. Her statement u/s 164 of the Criminal Procedure Code and her medical examination by the doctor have been proved and marked as Exhibit 3 and, further, the police officer and the magistrate who recorded the statement of the victim examined. The statement u/s 164 of the Criminal Procedure Code has been marked as Exhibit 1, fardbeyan Exhibit 4 and P.Ws. 5 and 6 are the persons in whose presence the girl, Gita Devi, has been recovered. P.W. 7 is a formal witness who has proved the seizure list, Exhibit 8.

6. However, the trial Court taking into consideration the evidence of P.Ws. 4, 5 and 6 held that it is evident that Gita Devi was recovered from the house of accused, Meera Devi, on 06.01.1997 at 04.00 p.m. The victim, Gita Devi, was medical examined by P.W. 3 and the doctor found swelling on her body and said Gita Devi was examined by P.W. 2 who found her age to be 14-16 years, as such, the girl Gita Devi recovered from the house of accused Meera Devi was then a minor and she was resident of Palamau district. On this fact the trial Court drawn an inference that a minor girl of Palamau was found confined in the house of Meera Devi, which by itself indicates that Meera Devi has reason to believe or has knowledge that the said Gita Devi is a kidnapped girl and she has been kidnapped for the purpose of having sexual intercourse with any person against her will.

7. The trial Court, however, proceeded further and held that no prosecution evidence to indicate that co-accused Ram Chandra Pankaj kidnapped Gita Devi. The statement u/s 164 of the Criminal Procedure Code of Gita Devi can not be used as a substantive piece of evidence as Gita Devi was not examined as a witness. There is no evidence on record to show that Ram Chandra Pankaj committed rape upon Gita Devi and, however, convicted the appellant for offence under Sections 368 and 373 of the Penal Code holding that the prosecution has been able to prove that accused, Meera Devi has wrongfully concealed or confined Gita Devi after knowing that she has been kidnapped with the intention that she may be forced or seduced to sexual intercourse with another person, however, acquitted the accused, Ram Chandra Pankaj.

8. The learned counsel for the appellant, however, contends that since the informant has not come to depose in the case, hence, substantive evidence is missing and order of conviction can not be recorded on secondary evidence, hence, the order of conviction can not sustain.

9. However, going through the records I find that a charge was framed u/s 372 of the Penal Code at the out set after commitment against Meera Devi and Ram Chandra Pankaj on 20.05.1998. However, the trial proceeded and after the evidence of prosecution was closed, the accused persons having been recorded on 15.12.1998. After the statement of accused recorded a charge against Meera Devi

altered framed for offence under Sections 368 and 373 of the Penal Code on 18.01.1999 before the order of conviction recorded on 27th March, 1999. However, in this case the prosecution case in the fardbeyan of the victim Gita Devi has stated that she was picked up and kept her with meera Devi and was raped by Ram Chandra Pankaj and, thereafter the appellant used to compel her to meet the sexual demand of another person and had undertaken sexual intercourse with another person and, thereafter, arranged for sale. However, victim, Gita Devi, herself has not been come to depose in the case. Her statement u/s 164 of the Criminal Procedure Code is only a corroborative piece of evidence and is not substantive evidence. However, the only evidence against the appellant remained that the victim was recovered from her house and had injury like swelling on her body and, hence, these evidences that she was minor having injury on her body and found in the house of Meera Devi, any inference for offence under Sections 368 and 373 of the Penal Code is mere a conjuncture and surmises and is without any basis. Other evidence about statement u/s 164 of the Penal Code about the statement of the witnesses that the victim disclosed is concealed by hear-say and is not admissible in evidence and, hence, the order of conviction and sentence against Meera Devi recorded on the basis of hear-say evidence.

10. Hence, the order of conviction and sentence recorded by the lower Court is hereby set aside and the appeal is allowed.