

Cr. Appeal (S.J.) No.1156 of 2006

[Against the judgment of conviction and order of sentence dated 14.07.2006 passed by learned Additional Sessions Judge, FTC, Dhanbad in S.T. No.276 of 2004/30/2004]

Bhola Rawani, son of Kashi Nath Rawani resident of Harina Basti,
P.S. Barora; District-Dhanbad Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Mahesh Tewari, Advocate
For the State : Mr. Tarun Kumar, A.P.P.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGEMENT

CAV On 29/10/2024

Pronounced On 20 / 12/2024

Per- Pradeep Kumar Srivastava, J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 04.07.2006 passed by learned Additional Sessions Judge, FTC, Dhanbad in S.T. No.276 of 2004/30/2004 whereby and whereunder, the appellant has been held guilty and convicted for the offence under Section 366 of Indian Penal Code and sentenced to undergo R.I. of 3 years along with fine of Rs.1,000/- with the default stipulation.

FACTUAL MATRIX

2. Factual matrix giving rise to this appeal is that on 18.02.2004 at about 8 PM, the informant's minor daughter aged about 15 years went from the house to attend nature's call but did not return after 2-3 hours. The informant(mother of the victim girl) started searching her then she came to know from some villagers that about one hour ago, Bhola Rawani and the victim girl were seen going on a motorcycle bearing Reg. No. JH-10C-3820 towards Herna Bazar. It is also alleged that there was lover affairs between Bhola Rawani and her daughter and on earlier occasions also, the accused tried to kidnap the victim girl for solemnizing marriage with her. It is also alleged that the informant was waiting for return of her daughter along with the accused but they did not turn up, then on 20.02.2004, a written report (Ext 1) was lodged at Baghmara (Barora police station). Accordingly, FIR was registered for the offence under section 366 of IPC.
3. After conclusion of the investigation, the charge-sheet was submitted against above named accused/appellant for the offence under section 366A of IPC. The charge was framed against the accused for the offence under section 366A but later on the same was corrected under section 366 of IPC. After

conclusion of the trial, the impugned judgment and order has been passed.

4. Learned counsel for the appellant assailing the impugned judgment and order of conviction and sentence of the appellant has submitted that the appellant is absolutely innocent and has been falsely implicated in this case. It is admitted fact that as per medical evidence, the victim girl was aged about 18 years on the date of alleged occurrence. There was love-affair between the victim girl and the accused and the victim girl on her own accord proceeded with the accused from her house. There is no iota of evidence that the victim was enticed or abducted by any inducement or threat and the victim girl was never forced for any illicit intercourse or to solemnize marriage with appellant against her will, therefore, no offence under section 366 of IPC is constituted against the appellant. The witnesses of facts examined in this case and closely related witnesses to each other and family members of the victim girl, who have given self contradictory evidence, which cannot be relied upon. It is further submitted that the Investigating Officer of this case has not taken pain to ascertain the name of registered owner of the seized motorcycle bearing Reg. No. JH-10C-3820 allegedly used in this case for taking

away the victim girl. He has also not got recorded the statement of the victim under section 164(1) Cr.P.C. The victim girl has not leveled any allegation against the appellant constituting the ingredients of the offence under section 366 of IPC. Therefore, the learned trial court has miserably failed to properly appreciate the evidence of the witnesses available on record in proper prospective particularly the evidence of the victim girl coupled with her the medical examination report, which categorically shows that the victim girl was a major girl and she proceeded with the accused on her own accord and there was no inducement for any illicit intercourse or solemnization of marriage or any other object as defined under section 366 of IPC. Hence, the impugned judgment and order is fit to be set aside along by allowing this appeal.

5. **Per contra**, learned A.P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the trial court has considered all the aspects of the case including the evidence of the victim girl and her family members. There is no concrete evidence at all that at the time of occurrence, the victim girl was major lady and she proceeded with her own accord along with the appellant rather she was abducted on a motorcycle by

the present appellant for the purpose of solemnizing marriage with her without her consent. It was a case of kidnapping of the victim girl from the lawful guardianship, therefore, the conviction and sentence of the appellant does not suffer from illegality and infirmity. There is no legal substance in the points of arguments raised on behalf of the appellant and being devoid of merit, this appeal is fit to be dismissed.

6. For better appreciation of the above arguments, relevant provision is extracted here:-

“366. Kidnapping, abducting or inducing woman to compel her marriage, etc. —

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

7. From the aforesaid provision of section 366 of IPC, it is obvious that there must be kidnapping and abduction of a woman

enticing to force her to marry against her will or may be forced for illicit relationship.

As per provision of section 361 of IPC kidnapping from lawful guardianship consist in taking or enticing a minor or person of unsound mind out of lawful guardian getting without guardian's consent the minor must be under 16 years of age, if a male or under 18 years of age if a female.

Section 362 of IPC defines the crime of abduction as under: Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

8. In the instant case the most important evidence is of the victim girl and the doctor who conducted medical examination of the victim. The victim girl has been examined as P.W.5. According to her evidence, on the occasion of Shiv Ratri festival at about 8 PM, she had gone to attend nature's call behind her house near Bari. Meanwhile, Bhola Rawani came from behind, gagged her mouth and got her seated on a scooter and went to Godhar at the house of his sister. The appellant put vermilion on her head, thereafter they went to Dhanbad railway station by a tempo and on next day, they went to Durgapur (West Bengal) and from Durgapur, both boarded in a bus and the victim girl

was brought to the house of his uncle but his uncle badly scolded them and communicated the matter to the grandfather of the accused. Meanwhile, the case was lodged by her father and both were arrested by the police.

In her cross-examination, she has categorically admitted that the police has never interrogated with her about the occurrence and she also stated that the accused is her gotiya. Throughout her journey, she was not maltreated by the accused and she did not raise alarm at any point of time when she was along with the accused. She has also not complained to any person at Dhanbad railway station or while she was in the tempo. When she was sitting beside the accused/appellant and if any one queried about their relationship, she disclosed as the wife of the accused. She has not stated a single word that she was seduced for intercourse or to solemnize marriage with the accused without her consent in order to fulfill the ingredients of section 366 of IPC.

9. Other witnesses of the fact are close relatives of the victim girl namely P.W.1 Mantu Rawani is the sister's son of the victim girl, P.W.2 Sanjay Rawani is the grandson of the informant, P.W.3 Puran Rawani is cousin of victim girl, P.W.4 Dasi Devi (the informant, who happens to be mother of the victim girl),

P.W.7 Sri Onkar Nath Choudhary, Judicial Magistrate First Class has proved the statement of the victim recorded under section 164 of Cr.P.C.

10. **P.W.8 is S.I. Raj Kumar Yadav** is Investigating Officer of this case, who has clearly admits that he has not recorded the statement of the victim under section 164 of Cr.P.C.. He has not investigated about ownership of the motorcycle involved in this case. The place of occurrence is the house of the victim girl and the house of the accused is also adjacent to the house of the victim girl. He further stated that in course of investigation, he recovered the victim girl from the house of the accused and sent the victim girl for medical examination and found sufficient evidence submitted charge-sheet against him.

11. **P.W.6 Dr. Reeta Gupta**, who examined the victim girl on 22.02.2004 and found hymen old tear but no sign of injury either external or internal on the private part. As per radiological report, the age of the victim was assessed to be 18 years and as such she found no sign of recent sexual intercourse.

12. From the aforesaid discussion of prosecution evidence, it appears that no concrete evidence regarding age of the victim

girl has been adduced by the prosecution and as per her medical examination report, she was found 18 years old and physically and mentally well developed. The conduct of the victim girl during the overall episode definitely indicates her consensual attitude due to love affair with the present appellant. Although, they were gotiya, hence, family members were not ready to solemnize their marriage. In the circumstances of both the victim girl and the appellant transgressed bond of their blood relationship under passion fled away but due to lodgment of criminal case by the mother of the victim girl, both were apprehended. It further transpires that the victim girl was major at the date and time of the occurrence. She voluntarily accompanied with the appellant, raised no protest and never abducted by any place. When the appellant and the victim girl went to the house of his uncle, both were scolded by him and message was communicated to the mother of the victim girl, thereafter, an FIR was lodged. Thus, there appear no ingredients of abduction or kidnapping as discussed above or any element constituted the offence under section 366 of IPC against the appellant.

13. In view of the aforesaid discussion and reasons, I find merits in this appeal. Accordingly, the impugned judgment and order of

conviction and sentence of the appellant is hereby set aside and this appeal is allowed.

14. The appellant is on bail, hence, he is discharged from bail bond. The sureties are also discharged

15. Pending I.A(s), if any, is also disposed of accordingly.

16. Let the copy of this judgment along with record of trial court be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date:- 20/12/2024

Pappu/- N.A.F.R.