

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 1113 of 2006

[against the judgment of conviction dated 15.07.2006 and order of sentence dated 19.07.2006 passed by learned 1st Additional Sessions Judge, Seraikella in Sessions Trial No. 173 of 2001]

Ganesh Mahto @ Bodo, Son of Punu @ Puran Mahto,
resident of Village- Adityapur Basti, P.S.- Adityapur,
District- Seraikella-Kharswan.

..... Appellant

Versus

The State of Jharkhand

..... Respondent

.....

For the Appellant : Mrs. Juhi Kumari, *Amicus*.

For the Respondent : Mr. Manoj Kumar Mishra, A.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated: 13th December, 2024

By Court: - Heard learned counsel for the parties.

2. The present appeal is directed against the judgment of conviction dated 15.07.2006 and order of sentence dated 19.07.2006 passed by learned 1st Additional Sessions Judge, Seraikella in Sessions Trial No. 173 of 2001, whereby and where under, the appellant has been held guilty for the offence punishable under Section 363 of the I.P.C. and sentence to undergo R.I. for four years along with fine of Rs.1,000/- with default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal in a narrow compass is that on 25.02.2001, while the informant was busy in worship, she realize that her daughter aged about 17 years was absent from her house. On search, informant found a box, where she found a love letter, which is written by Ganesh Mahto (appellant) to her daughter. Then, informant along with her another daughter went to the house of appellant and asked him for her daughter, but he told that her daughter will not go with them. It is further alleged that Ganesh Mahto has kidnapped her daughter with intent to marry with her.
4. On the basis of fardbeyan of the informant, FIR was registered as Adityapur P.S. Case No. 59 of 2001 was registered for the offences under Section 366-A of the I.P.C.
5. After completion of investigation, the Investigating Officer has submitted the charge sheet against the present appellant to face the trail and after conclusion of trail, appellant has been acquitted from the charges under Sections 363-A and 368 of the I.P.C., but found guilty for the offence under Section 363 of the I.P.C. and sentenced

to undergo R.I. for 4 years along with a fine of Rs.1,000/- with default stipulation.

6. In order to substantiate the charges levelled against accused, altogether seven witnesses were examined by the prosecution.

P.W.-1 : Laxmi Ho (Elder sister of the victim).

P.W.-2 : Mani Ho (Mother of the victim).

P.W.-3 : Bablu Ho (Brother of the victim).

P.W.-4 : Anita @ Meena (Victim).

P.W.-5 : Smt. Kalpana Singh

P.W.-6 : Investigating Officer.

P.W.-7 : Medical Officer.

7. Apart from oral evidence, following documentary evidences were also adduced.

Exhibit-1 : Written report.

Exhibit-2 : Letter.

Exhibit-3 : Signature of Bablu Ho on Seizure list.

Exhibit-4 : Statement of Victim recorded under Section 164 Cr.P.C.

Exhibit-5 : Signature of Kalpana Sinha on fardbayan

Exhibit-6 : FIR.

Exhibit-7 : Seizure List.

Exhibit-8 : Medical Report.

8. The case of defence is denial from occurrence and false implication. However, no oral or documentary evidence has been adduced by the defence.
9. Learned *Amicus Curiae* on behalf of the appellant submits that the appellant has been convicted and sentence for the offence under Section 363 of the I.P.C. The victim girl was aged about 16 to 18 year. There was love affair between the victim girl and the appellant and both eloped with their consent and within 24 hours, the victim girl was recovered and handed over to their parents. It is fairly submitted that the consent of victim has no relevance for the offence under Section 363 of the I.P.C., but the appellant has been remained in custody for more than two years during the trial of the case. The occurrence is of the year 2001 and appellant was also teenager at that time, therefore, without touching the merits of the judgments, he has confined herself towards for reduction of sentence awarding to the appellant by the concerned trial court.

10. Per contra, learned A.P.P. appearing for the State has defended the judgment on merits, but he has raised no serious objection about quantum of sentence to be awarded to the appellant.
11. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.
12. It appears that the FIR was instituted for the offence under Section 366-A of the I.P.C. against the appellant with allegation that on 25.02.2001, informant's daughter aged about 17 years was not present at her house. Informant (mother of the victim girl) enquired into in the locality and came to know that the present appellant has taken away the minor girl of the informant due to love affairs between them. The informant went to the house of appellant, but he decline to return the victim girl. After institution of the case, the victim girl was recovered and after medical examination, she was handed over to the informant.
13. Considering the entire factual aspect of the case and in view of the fact that the victim was recovered within 24 hours and handed over to the lawful guardian and the occurrence took place under the passion for each other

and the appellant has also undergone custody for more than two years during the trial of the case, I feel incline to reduce the sentence awarded by learned trial court to imprisonment already undergone by the appellant.

14. In view of the aforesaid discussions and reasons, this appeal is dismissed on merits, but with modification in sentence to the extent that appellant is sentenced for the period of imprisonment already undergone for offence under Section 363 of the I.P.C.
15. Appellant is on bail. He is discharged from the liability of bail bond. Sureties shall also be discharged.
16. The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus Curiae an amount of Rs.25,00/-.
17. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi.

Dated: 13th December, 2024.

Simran/-**NAFR**