

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.A(SJ) No.1305 of 2006

Uma Das, Wife of Chran Das, Resident of Near Kabir Mandir, 164
Bhagwat Mohalla, P.S. Sonari, Jamshedpur, District - East
Singbhum.

... Appellant

Versus

The State of Jharkhand

... Respondent

For the Appellant	----- : Mr. Anurag Kashyap, Adv. Mr. Ritesh Verma, Adv.
For the State	: Mr. Fahad Allam, Addl. P.P. -----

P R E S E N T

Coram: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated- 18.11.2024

By Court:- Heard Mr. Anurag Kashyap, learned counsel appearing
for the appellant as well as Mr. Fahad Allam, learned Addl.
P.P. appearing for the State.

2. This appeal is directed against the judgment and order
of conviction and sentence dated 14.08.2006 passed by
learned Additional District and Sessions Judge, Fast Track
Court No.IX in S.T. Case No.366 of 2001 whereby and
whereunder the appellant was sentenced to undergo S.I. for
three years and to pay fine of Rs.2000/- with default

stipulation for the offences punishable under Section 366A/34 of the Indian Penal Code.

3. The prosecution case is based on written report of Hiranman Prasad (informant) stating *inter alia* that on 31.05.2001 at around 10:00 PM, his minor daughter, Kiran Kumari, went to the roof of the house after dinner. The informant suspected that his tenant, Uma Das (appellant), was trying to make arrangement for the talk in between his daughter and another tenant, Chitranjan Ojha, despite his earlier objections. After an hour, he found that his daughter along with Uma Das, Charan Das and Chitranjan Ojha, were missing from the roof and the back door of his house was opened. He suspected that his daughter had been kidnapped for improper purposes. Initially, to protect his family's dignity, he did not report the matter to the police but later submitted a typed report on 05.06.2001, suspecting the accused persons have kidnapped his daughter.

On the basis of informant's typed report, a formal F.I.R. was instituted as Kadma P.S. Case No.67 of 2001 for the offences punishable under Sections 366, 366(A) and 120(B) of the I.P.C. During investigation, the victim girl was recovered

and her statement was recorded under Section 164 of the Cr.P.C.

4. After completion of the investigation, charge-sheet was submitted against the appellant for the aforesaid offences and accordingly, cognizance was taken and subsequently, the case was committed to the Court of Sessions where Sessions Trial No.366 of 2001 was registered; Charges were framed against the accused persons under Section 366A/120B of the I.P.C. which was read over and explained to him for which he denied and claimed to be tried. Trial of the co-accused Chitranjan Ojha was separated from the original file as he was absconded.

5. After conclusion of trial, the appellant was held guilty for the aforesaid offences and sentenced as stated above which has been assailed in this appeal.

6. Learned counsel for the appellant has submitted that appellant is a woman and there is simple allegation against her that she called the victim girl in pretext that her father was calling while she was going on roof of the house then she step down and was kidnapped by other co-accused persons. Admittedly, there was dispute of eviction from rented

quarter belonging to informant in which the appellant was residing and due to some practical difficulty, appellant was not able to vacate the rented quarter, hence, she has been falsely implicated in this case. The appellant is absolutely innocent. Therefore, the conviction and sentence of the appellant is liable to be set aside, allowing this appeal. In alternative, it is pleaded that the appellant has remained in custody for one year and four months out of three years' imprisonment awarded to her for the offence under Section 366A/34 of the I.P.C. Therefore, she may be sentenced for the imprisonment already undergone.

7. On the other hand, learned Addl. P.P. appearing for the State has opposed the aforesaid contentions defending the impugned judgment of conviction and sentence of the appellant and submitted that the appellant was main person who facilitated the commission of offence of procurement of the minor girl for her brother Chitranjan Ojha. Therefore, her role in commission of the offence is apparent. There is no merit in this appeal which is fit to be dismissed.

8. It appears that in order to substantiate the charges levelled against the present appellant altogether seven

witnesses were examined out of them P.W.-1 is the victim girl who was examined on 26.07.2001 under Section 164 Cr.P.C. disclosing her age as 17 years. According to her evidence on 31.05.2001 at about 10:00 a.m. in the night, she was going to the third floor of her house when the electricity supply was cut off. As she reached the second floor, she saw Uma Das speaking with her mother, Anita Ojha. Uma Das informed her that her father was calling near the grill. On hearing this, Kiran Kumari (victim) went to the ground floor, followed by Uma Das. When she reached near the grill, she noticed that her father was not there and a Maruti car was parked nearby with its running engine. At that moment, Chitranjan Ojha, Charan Das, and two of their friends stepped out of the car. Chitranjan Ojha gagged her mouth with a cloth preventing her from raising an alarm and forcibly put her into the car. Uma Das, Charan Das, Chitranjan Ojha and two to three others entered the car and drove around the entire night with her. During this time, they were indulged in forcing the victim for marriage. At around 5:30 a.m., they boarded her to a tempo and attempted to marry forcibly with her. When she resisted, Chitranjan Ojha slapped her. At that moment, there

were no other people present, nor was a Pandit available to perform the marriage. Subsequently, they confined her in a rented house. During the month of shawan, Chitranjan Ojha came in a drunken state and attempted to sexually assault her against her will. When she resisted, he burned her hand with a cigarette, causing injuries. Despite her resistance, Chitranjan Ojha committed rape on her. Chitranjan Ojha later threatened her and forced her to sign on a blank paper. On 25.07.2001, the police recovered her. She was medically examined at MGM Hospital on 26.07.2001. Subsequently, she was produced before a magistrate, where her statement under Section 164 Cr.P.C. was recorded and she put her signature (Exhibit 1).

In her cross-examination, the victim girl has stated that at the time of the incident, she was student of Intermediate and residing in a house where Charan Das, an employee of TISCO, was a tenant on the second floor. She further states that Uma Das and Chitranjan Ojha were siblings and Anita Ojha was their mother. After abduction, she was confined in a rented room near Sakchi Gurudwara Basti for about one and a half months. During this period, she was kept under

constant surveillance by a maid, locked inside the room and was not allowed to go outside. The victim girl has specifically alleged that Chitranjan Ojha has committed sexual intercourse with her three times during her confinement. She has also produced six photographs as evidence (Exs. A to A/5) and proved the original love letters from Chitranjan Ojha (Exs. B and B-1). She stated that on 25.07.2001, the police rescued her and arrested Chitranjan Ojha.

P.W.-2 Dr. Saroj Saha has medically examined the victim girl and found no mark of sexual assault and age of the victim after radiological examination was assessed to be 17-18 years.

P.W.-3 Hiraman Prasad is the father of the victim girl. He has proved the contents of his written report and stated that his daughter, Kiran Kumari, went to the roof around 09:45 PM on 31.05.2001 and did not return. After an hour, he searched for her but found her missing. His tenant, Rajendra, informed him that Charan Das, Uma Das, Chitranjan Ojha @ Chhito and Anita Ojha had left the house with Kiran Kumari after locking the room. Despite extensive efforts, he could not trace his daughter. Four days later, he filed a written report

with the police, substantiating it as Ext.3. He stated that Charan Das and Uma Das were his tenants. The police later recovered Kiran Kumari from a house in Sakchi Gurudwara, owned by a Patel, where the accused Chitranjan Ojha was also apprehended. He identified all the accused in court.

In his cross-examination, he admits that he retired as a Hawaldar from the police service and lived on the ground floor of the house, while accused Charan Das resided on the second floor with his wife Uma Das and their two children. Anita Ojha lived approximately 1.5 km away in Kadma Park. Chitranjan Ojha, the brother-in-law of Charan Das and brother of Uma Das, frequently visited their house. About a month before the incident, he had asked Charan Das to vacate the premises. He further stated that his daughter, Kiran Kumari, was an Intermediate student at Graduate College, Jamshedpur. On 31.05.2001, he did not personally see Kiran going to the roof, but around 11:00 PM, his family informed him that she had not returned. He immediately reported the incident to the police orally. He also noted that Rajendra Pd. Chaurasia, his tenant at the time of the incident, later vacated the house and his current address is unknown.

The written report submitted to the police on the fifth day of the incident was drafted by his lawyer and typed thereafter.

P.W.-4 A.S.I. Sant Bilas Singh is the Investigating Officer of this case. According to his evidence, he inspected the place of occurrence at Bhatia Basti, near the informant's residence, where accused Uma Das resided on the second floor as a tenant. Nearby houses belonged to G.C. Das, Dilip Yadav and Kapil Deo Giri. He recorded the statements of witnesses during the investigation. On 25.07.2001, he received information that accused Chitranjan Ojha was residing with the kidnapped girl, Kiran Kumari, in the house of Satlal Patel at 11B, Sakchi Gurudwara Basti. He conducted a raid, recovered both Chitranjan Ojha and Kiran Kumari and sent Chitranjan Ojha to jail. He sent the victim for medical examination and on next day, also got her statement recorded under Section 164 Cr.P.C. After conclusion of investigation, he submitted charge-sheet against the accused persons.

P.W.-5 Satya Nath Sinha is a Judicial Magistrate who has recorded the statement of victim girl under Section 164 Cr.P.C. And proved the same as Ex.6.

P.W.-6 Manoj Kumar Yadav was on the roof of his

uncle's house (Hiraman) when the incident took place. After hearing hullah that Kiran Kumari was not present in the house, he was informed by one tenant that Chitranjan Ojha and Charan Das took the victim girl on a Maruti Car. Thereafter, a search was made but could not trace her out. After some days, victim girl was recovered by the police.

In his cross-examination, he admits that he has not seen the occurrence of kidnapping.

P.W.-7 Urmila Devi is the neighbour of the informant. She had not witnessed the occurrence of kidnapping and deposed in the same line as the informant.

9. After conclusion of prosecution evidence, the defence has adduced documentary evidence Ex.B and B/1: love letters and Ex.A to A/1: photographs. However, defence plea is innocence and false implication by the father of the victim girl.

10. For better appreciation of the issue raised, the relevant provision of Section 366A IPC is extracted hereunder:

"366A. Procuration of minor girl. -- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit

intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

From a bare perusal of the section, it appears that there are three essential ingredients to constitute the offence of procurement of a minor girl under Section 366A IPC. Those are :

- (1) the victim girl must be induced by the accused ;*
- (2) she must be a minor under the age of 18 years and*
- (3) she must be induced by the accused person to go from a place or to do any act with intent that such girl may be or knowing that it is likely that, she will be, forced or seduced to illicit intercourse by another person.*

Hon'ble Supreme Court in the case of **Sannaia Subba**

Rao v. State of A.P., (2008) 17 SCC 225 held as under:

"39. So far as Section 366-A IPC is concerned, in such an offence what is required to be proved by the prosecution is that there is cogent and reliable evidence to prove and establish that a minor girl under the age of 18 years was induced to come from one place to the other with the intention that such girl may be forced to have illicit intercourse with another person. Therefore, in such an offence, the chief ingredient is that the girl is made to go from one place to the other with the intention or knowledge that she may be forced to have illicit intercourse. The evidence on record does not reveal any such intention. That the prosecutrix was subjected and forced to have illicit intercourse came to be stated for the first time only during the trial, which according to us is nothing but embellishment in order to see that the accused persons are made and are subjected to major punishments."

10. It appears that the role of the appellant in the alleged occurrence as stated by the victim girl in her evidence that while she was going to upper story of the house an electricity light was cut, meanwhile, present appellant met and said her father was calling near the grill, while she was returning to the ground floor, she did not find her father there and subsequently, Chitranjan Ojha came and gagged her mouth and forced her to board into a Maruti car. The victim girl was taken in the running car, where the accused discussed about marriage. Thereafter, in the morning, they shifted her to a tempo and attempted to marry her forcibly. When she resisted, Chitranjan slapped her. The accused then kept her in a rented house. Later, in the month of Sharwan, while in a drunken state, Chitranjan Ojha attempted to sexually assault her. When she resisted, he burned her hand with a cigarette and committed rape on her. Afterward, Chitranjan threatened her and forced her to sign a blank sheet of paper.

11. The aforesaid ingredients of the offence do not attract against the present appellant, therefore, conviction and sentence of the appellant for the offence under Section 366A of the I.P.C. is not sustainable.

12. In view of the aforesaid discussions and reasons, I find force in the contentions raised on behalf of the appellant and merits in this appeal which is hereby allowed and impugned judgment and order of conviction and sentence of appellant is hereby set aside. Appellant is on provisional bail. He is discharged from liability of bail bond and sureties are also discharged.

13. Let a copy of this judgment along with Trial Court record be sent back to the concerned Trial Court for information and needful.

14. Pending I.A., if any, stands disposed of.

(Pradeep Kumar Srivastava, J.)

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