

Bharat Poddar Vs. the State of Bihar

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Court : Patna

Decided On : Jan-15-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 699 of 2013

Appellant : Bharat Poddar

Respondent : The State of Bihar

Judgement :

1. Sole appellant Bharat Poddar has been found guilty vide judgment dated 17.09.2013 for an offence punishable under Section 366A of the IPC as well as 376 of the IPC and sentenced to undergo R.I. for five years as well as also slapped with fine appertaining to Rs.5,000/- in default thereof to undergo S.I. for six months under Section 366A, R.I. for seven years as well as also slapped with fine appertaining to Rs.10,000/- in default thereof to undergo S.I. for one year, with a further direction to run the sentences concurrently vide order dated 20.09.2013 by Adhoc Additional Sessions Judge-Ist, Saharsa in Sessions Trial No.135 of 2013 is the subject matter of challenge in the instant appeal.

2. It has been submitted on behalf of the appellant that the judgment of conviction and sentence recorded by the learned Lower Court happens to be bad and illegal as well as is also based upon wrong appreciation of the evidence available on the record. It has been submitted that save and except P.W.1 Fulo Kumari, the victim,

none is an eye witness of the occurrence. It has further been submitted that Fulo Kumari happens to be a major girl as well as a consenting party and to support the same nine defence witnesses have been examined on behalf of the appellant. However, the learned Trial Court had completely ignored the same.

3. It has also been submitted that appreciation of the evidence of doctor P.W.5 with regard to estimation of age of victim Fulo Kumari happens to be wrong and illegal. In likewise manner as well as the age of the victim has purposely been shown by the prosecution as 13 years although she happens to be a major one, could not be relied upon in the background of the fact that the age of the victim is to be ascertained in terms of procedure prescribed under Juvenile Justice Act for ascertainment of age of delinquent (Juvenile) in conflict with law and that happens to be proposition of law enunciated by the Honble Apex Court reported in 2013 AIR SC 3467. Because of the fact that prosecution failed to get the age of the victim P.W.1 Fulo Kumari duly ascertained in accordance with rules so framed under Juvenile Justice Act, as such, the age so estimated by the learned Trial Court, being contrary thereof, is fit to be rejected. On this score, it has also been submitted that right from the written report, it is evident that Fulo Kumari P.W.1 was kidnapped while she was going to appear in an examination being a student of Class-IX. In the aforesaid background, it was incumbent upon the prosecution to place the date of birth shown under school admission register which purposely been withheld by the prosecution and on account thereof, an adverse inference has to be taken into account. In the aforesaid background, it has been submitted that when the aforesaid deficiencies is taken together with the evidence of D.Ws. it could safely be inferred that the victim P.W.1 Fulo Kumari happens to be major one.

4. Now coming to the evidence of P.Ws., it has been submitted that from the evidence of Fulo Kumari itself, it is apparent that she was a consenting party and on account thereof, being major appellant cannot be held guilty for kidnapping as well as for commission of rape rather whatever had happened, been consensual one. So submitted that the judgment of conviction and sentence recorded by the learned Trial Court happens to be bad, illegal, arbitrary and is fit to be set aside with regard to status of other P.Ws., it has been submitted that they are worthless.

5. On the other hand, the learned Additional P.P. while supporting the finding recorded by the learned Trial Court has submitted that there happens to be conclusive evidence brought up on the record on behalf of prosecution that the victim P.W.1 Fulo Kumari was minor on the alleged date and time of occurrence. It has also been submitted that the aforesaid finding was not at all subject to challenge on behalf of the appellant during course of trial and on account thereof, the appellant is precluded from raising the issue. Now coming to the other aspect, it has been submitted that there happens to be consistent evidence of the witnesses with regard to kidnapping of victim by the appellant as well as commission of rape and on account thereof, the sentence recorded by the learned Trial Court happens to be just, legal, proper and is fit to be confirmed.

6. P.W.4 Vijay Choudhary, father of victim Fulo Kumari filed written report on 22.07.2012 disclosing therein that his daughter Fulo Kumari aged about 13 years, a student of Class-IX had proceeded to Kanya Uchya Vidyalaya, Simri Bakhtiyarpur at about 12.00 noon for examination. As his daughter did not return till evening, a hectic search was made but having fruitless result and during course thereof, he came to know about Bhart Poddar enticed away his daughter and on account thereof, he had contacted father of Bharat Poddar and requested him to get his daughter at his place. They demanded money for bringing Fulo Kumari which was paid even then Fulo Kumari was not handed over. He had further disclosed that on the same day that is on 22.07.2012, he had talked with his daughter on the mobile of Bharat Poddar(9534779190)) and during course thereof, she was crying.

7. On the basis of the aforesaid written report, Bakhtiyarpur P.S.Case No.171 of 2012 was registered and during course of investigation, victim along with appellant was apprehended. After having examination of victim under Section 164 of the Cr.P.C. as well as having herself to medical examination, chargesheet was submitted. Accordingly, the appellant was put under trial which concluded in recording conviction and sentence, hence this appeal.

8. From the Lower Court record, it is evident that altogether six P.Ws have been examined on behalf of the prosecution as well as series of documents have also

been exhibited. At the other hand, nine D.Ws. have been examined on behalf of appellant along with some exhibits.

9. After going through the evidences available on the record, it is apparent that two kinds of evidences have been adduced on behalf of the prosecution. The first one happens to be that of P.W.1 Fulo Kumari, the victim herself and the second category happens to be corroborative in nature by adducing P.Ws.2,3 and 4. P.W.5 is the doctor and P.W.6 is the investigating officer.

10. From the evidence of victim, P.w.1 her evidence is not found above board. At the other hand, her conduct as well as approach during continuance of stay with the appellant during intervening period speaks otherwise and on account thereof, this case rest upon the sole question whether the victim happens to be aged about 16 years or above of her age, the consensual age accepted in terms of Section 375 IPC.

11. From the Lower Court Record, it is also apparent that the victim P.W.1 was student of Class-IX of Kanya Uchya Vidyalaya. She was studying but the investigating officer did not visit the school and in likewise manner, failed to see the date of birth of the victim incorporated in the concerned school admission register. Side by side, it is also evident from the conduct of the appellant that he was also not sincere on that very score in the background of the fact that there is no denial of being tutor as well as having the victim admitted to school at his instance. Although subsequently two exhibits have been brought up, Ext-D an information given by Principal of Plus-II Project Girls High School, Simri Bakhtiyarpur in response to query made under right to Information Act divulging that Fulo Kumari was not admitted in Class-IX of this school during Sessions 2012-13. Ext-C happens to be the admission register of upgraded middle school Rangania Simari, Bakhtiyarpur incorporating presence of Fulo Kumari having date of birth 10.05.1994 and those documents have been proved by D.W-8 and 9 while D.W.1 to 5, co-villagers have spoken about the age of Fulo Kumari as per their own estimation.

12. At the other hand, right from written report, the age of the victim has been shown as 13 years while during course of medical examination her age was

estimated in between 14-15 years.

13. The I.O. P.w.6 during his cross-examination at para-15 has admitted that he had not seen the school register or any other document for estimation of age of the victim. P.w.5, the doctor had not been cross-examined on the point of age. That means to say the estimation of age by the medical doctor remained intact, unshaken.

14. P.W.4, the informant in para-3 of his cross-examination has stated that Bharat Poddar had gone to admit his daughter. He is not remembering the year. First of all, his daughter was student of Govt. School lying in his village. In para-4 there happens to be denial by way of suggestion that he along with his wife had got admitted his daughter at Middle School Rangania wherein he had incorporated the date of birth as 10.05.1994. He further denied the suggestion that the name of his daughter was not admitted in any other school save and except this school.

15. P.W.3 is the uncle of P.W.1, the victim has not been cross-examined on the question of age.

16. P.W.2 is the mother. In para-6, she had clearly stated that her daughter was admitted at Kanya Uchya Vidyalaya, Bakhtiyarpur. Bharat Sao had admitted at Kanya Uchya Vidyalaya 10-15 days ago prior to the date of occurrence. In para-7 of his cross-examination, she has denied the suggestion that her daughter was admitted at Ranginia Madhya Vidyalaya on 11.07.2005 and her date of birth was shown as 10.05.1994.

17. P.W.1 happens to be victim herself. She had disclosed her age as 14 years. The court had also estimated her age as 14 years. During her examination-in-chief, she had simply stated that while she was going to Kanya Uchya Vidyalaya, Bakhtiyarpur for giving examination, met with accused Bharat Poddar who forcibly abducted her on Auto Rickshaw and took her to different places where she was raped. During her cross-examination at para-25 she had stated that examination was to commence from 1.20 hours. On that day the examination was relating to Hindi Paper. She had gone to Kanya Uchya Vidyalaya, Bakhtiyarpur. She is not remembering roll number. She got herself admitted in the school but was not a

regular student. She used to go only at the time of examination. In para-26, she had denied the suggestion that she was not a student of Kanya Uchya Vidyalaya, Bakhtiyarpur rather was admitted at Middle School Rangania, Simri Bakhtiyarpur. In para-27, she had again denied the suggestion that she was admitted at Middle school Simri Bakhtiyarpur on 11.07.2005 wherein she had disclosed her date of birth as 10.05.1994.

18. After scrutinizing the parallel evidence on the score of ascertainment of age of the victim, it is apparent that there happens to be complete absence of the concrete and positive evidence whereupon estimation of age of the victim P.W.1 could be accepted as more than 16 years, the crucial age denotifying the penal application. Ext-C is the document which loses its authenticity on account of the discrepancy persisting thereupon which has been rightly perceived by the learned Lower Court. Ext-D is of no use because of the fact that from the consistent evidence of the witnesses more particularly the victim herself that she was student of Kanya Uchya Vidyalaya, Simri Bakhtiyarpur while Ext-E happens to be that of different school. Moreover, D.W.9 could not be able to inter connect the same.

19. The decision as cited and referred on behalf of appellant is of no consequence because of the fact that the authenticity of the register Ext-C is found suspicious one in consonance with the evidence of P.W.8 being untrustworthy and in the aforesaid background, the only option left to accept the estimation of age to be based upon medical report covering 14-15 years. The evidence of P.W.5 on that every score is found unshaken. The expert opinion with regard to variance of one year of age either side estimated on ossification examination again will not go in favour of appellant because of the fact that date occurrence happens to be prior to the examination of the victim.

20. As has been perceived from the evidence available on the record that none of the material P.Ws. are an eye witness to the occurrence of the kidnapping, rape and further, the conduct of the victim do suggest a consensual act, even then is not going to give any parentic consideration in favour of appellant because of the fact that even having consent at the end of victim being less than 16 years of age is of no consequence. Moreover, from the evidence, it is evident that at the time of

occurrence appellant was already married, therefore, attract no leniency on the score of sentence for the offence whatever he had committed and held so. Therefore, the finding recorded by the learned Trial Court with regard to conviction and sentence is confirmed. Appeal is dismissed. Appellant is already under custody, hence will suffer the remaining period of sentence.

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