

Umesh Poddar Vs. State of Bihar

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Court : Patna

Decided On : Sep-04-2002

Judge : Indu Prabha Singh, J.

Appeal No. : Criminal Appeal No. 173 of 2001

Appellant : Umesh Poddar

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

Indu Prabha Singh, J.

1. The sole appellant has been convicted under Section 366A of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for five years, He was further convicted under Section 376 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for seven years. However, both the sentences were directed to run concurrently.

2. The prosecution case in short is that on 4.2.1993, the appellant Umesh Poddar came to the resident of the informant at 9 p.m. in connection with purchase of wheat and returned back to his house just after the talk with the informant. The informant also went to sleep and while he was sleeping his wife came and

informed the informant that his daughter Parvati Kumari was not present in the house. Thereafter, the informant searched his daughter, but she was not traced out. Thereafter, one Singheshwar Prasad told him that the daughter of the informant and Umesh Poddar were going Yesterday night on a motorcycle. Thereafter, the informant went to the house of the appellant and where he learnt from his family members that the Umesh was also not present since Yesterday night, then the informant suspected that the appellant Umesh Poddar had kidnapped his daughter and thereafter, he submitted a written report to the police on the basis of which the FIR was registered against the appellant under Section 366A of the Indian Penal Code. The police after investigation submitted charge-sheet against the appellant under Sections 366 and 376 of the Indian Penal Code. Accordingly cognizance of the offence was taken and the case was committed to the Court of Sessions. Ultimately the trial concluded with the result as indicated above. The appellant pleaded not guilty and has stated that he has been falsely implication in this case.

3. The prosecution in support of its case examined altogether six witnesses. P.W. 1 is Dr. Mini Rani, who had examined prosecutrix Parvati Kumari on 19.3.1993. P.W. 2 is Maheshwari Prasad Singh. P.W. 3 is Chandrarekha Devi, the mother of the prosecutrix. P.W. 4 is Sunil Kumar Singh. P.W. 5 is Lala Prasad Singh and P.W. 6 is Parvati Kumari, the victim girl herself. P.W. 2 Maheshwari Prasad Singh has stated that on 4.2.1993 at 9 p.m. the appellant went to the residence of the informant Lal Prasad Singh in connection with his business and returned from his house with Parvati Kumari, the daughter of the informant. According to him after search, he learnt through Singheshwar that he saw Umesh Poddar going with the victim Parvati Kumari. The other witness P.W. 3 Chandrarekha Devi, is the mother of the victim. She has also supported the case of the prosecution. According to her at 9 p.m. the appellant came in her residence in connection with purchase of wheat and thereafter, when she went in the room of her daughter and she did not find her there. Thereafter, she told the informant about her missing. The informant started searching her but she could not be traced out. However, one Singheshwar Prasad told him that he had seen the victim Parvati Kumari and appellant Umesh Poddar going through bank of the Pokhar. Thereafter, the informant went to the house of the appellant, but she was not available there too and the family

members told him that the appellant was also not in his house since yesterday night. Thereafter, the informant gave a written report and on that basis the FIR was drawn up. According to him his daughter was recovered from Gauripur. P.W. 4 Sunil Kumar Singh is a teacher He has also stated that on 4.2.1993, the appellant came in the house of Lala Prasad Singh, the informant for purchasing wheat and thereafter, he learnt that the Parvati Kumari, the daughter of the informant was not present in the house after search he along with the informant went to the house of the appellant and they found that appellant was not present in his house since yesterday night. According to him the girl was recovered on 29.3.1993 from the house, of the uncle (Mousa) of the appellant at Gauripur. When the girl could not be traced, then the informant on the next day went to the police station and information was given and on that basis FIR was drawn up. P.W. 5 the informant Lala Prasad Singh has fully supported the statements in his fardbeyan. According to him on 4.2.1993 at 9 p.m. when he was sitting at his Darwaja, the appellant came and asked him about purchasing of wheat and went away; When he went to sleep, he did not see his daughter on the bed and he started searching, but she was not traced in the night. Thereafter, in the morning he started searching in the village and one Singheshwar told him that he has seen his daughter going with the appellant Umesh Poddar in the last night near the Pokhar, Thereafter, he went to the house of the appellant, where he was not available and the family members of the appellant told him that he was not present in his house since last night. Thereafter, he went to the police station on 4.2.1993 at 8 p.m.- and gave information about the occurrence, which was marked as Ext. 2. According to him after two months of the occurrence on 29.3.1993 his daughter Parvati Kumari was found at Gauripur in the house of the (uncle) Mousa of the appellant. Thereafter, she was brought to the police station and she was given to the informant on Zimmenama and he got her on Zimmenama. He has stated that he along with some villager went to Gauripur when he was informed about his daughter. His daughter told him that the appellant after threatening her had taken away her. He has stated that the age of the girl at the time of Kidnaping was about 14-15 years. P.W. 6, the prosecutrix Parvati Kumari has also supported the case of the prosecution. According to her on the date of occurrence in the night she was in her house and thereafter, she; went into the field to attend the call of nature and at

that very time the appellant came and caught her from her back and then he got her seated on motorcycle and took her to village Gauripur, at the house of the (uncle) Mousa of the appellant. She was kept there for one, and half month and thereafter, her father came there searching her with 4/5 villagers and she was brought to police station and her statement was recorded. Thereafter, the police sent her to Sadar Hospital for her medical examination and she was examined by P.W. 1, the Medical expert. She has clearly stated that she did- not go with the appellant with her consent. She was taken away by the appellant forcibly on threats. She has also stated that the appellant committed rape on her while she was staying in the house of his Mousa. P.W. 1 is Medical expert Dr. Mini Rani, who has examined the victim Parvati Kumari on 29.3.1993. According to her as per the report of the radiologist and dental report and physical appearance the age of the victim was assessed about 17-18 years. According to her there was no mark of physical violence clinically on her body and external genetics. She found old torn hymen present. According to her the pregnancy test was also done but it was established that the victim girl was not pregnant.

4. Learned Counsel for the appellant submitted that in this case, the I.O. has not been examined which has prejudiced the case of the defendant. He has further submitted that there are contradictions in the deposition of the witnesses. It has been further submitted that there is doubt about the age of the victim girl, whether she was major or minor at the time of occurrence. He has relied on a decision on the point of non-examination of the I.O. 1984 PUR 441. In the case which has been cited it was held that there was discrepancy in the medical evidence and prosecution case and the prosecution case has become doubtful and the accused and the I.O. was not examined and the accused was accordingly acquitted, but in the present case, the non-examination of the I.O. has not prejudice the case of the defence as the victim P.W. 6 herself has narrated about her forcible kidnapping and has also alleged that rape committed by the appellant during her stay at Gauripur in the house of the Mousa of the appellant. That apart on the factum of kidnapping the P.W. 5, the informant, the father of the victim girl has also stated that he could gather from one Singheshwar that when the appellant left his house he went in her room and did not find his daughter and soon thereafter, he started her search and on search it was gathered by one Singheshwar that he had seen

the girl going with the appellant near the Pokhar. So far the decision reported in Cr. Law Journal 1996 (1) about discrepancy of age of the victim and the assessment of the age of the victim and the same is not applicable in this case as, in the above decision school admission certificate relating to the age of the victim was produced and it was held that the same was not reliable and trustworthy. In the present case, the age stated by parents and also victim suggest that she was below 16 years. Even according to medical estimation her age was below 18 years. On the question of kidnapping it is apparent from the deposition of the witnesses as well as the deposition of the victim girl that the girl was recovered after two months from the house of the mousa of the appellant. Factum of her recovery from the house of mausa of appellant coupled with deposition of victim and informant there remains no doubt about kidnapping of the girls. On the age of victim the Dr. P.W. 1 had estimated the age of the victim girl to be between 17-18 years and the Court also at the time of trial during the examination assessed that she was 20 years of age and so at the time of occurrence her age was 14-15 years. Estimation of age by a medical expert cannot be exact age, in cases when there is no proof of age, the age stated by parent and estimated by presiding officer should be given more weightage and relied upon. However, in arty case she was below the age of 18 years. Submission of learned Counsel that the doctor did not find¹ any sperm in the private part of the victim girl and also did not find any physical violence present on the body of the victim, does not suggest commission of rape. But, it is pertinent to note that in the deposition of the victim her allegation was that she was subjected to rape during her conferment at Gauripur. It was not the allegation that she was raped soon prior to she was recovered. After the sexual relation for couple of month how the doctor can find any physical violence. It is also important that she was used to sexual cohabitation as also opined by the doctor. Availability of sperm also becomes remote, if rape was committed days earlier the date of examination. Since, the age of the girl was below 18 years and the act of the appellant taking her away on motorcycle without permission of her legal guardian with an intention to have sexual relation with her attract the offence punishable under Section 366A of the Indian Penal Code. It has been also submitted by the learned Counsel that the evidence of the prosecutrix is not reliable and on only her evidence the accused should not be convicted. He has

placed reliance on a decision reported in 2002 SC 476 Surjan and Ors. v. State of M.P. in which it was held that the solitary testimony of prosecutrix cannot be relied upon and did not inspire confidence as the rape was committed by six persons and the same was not disclosed by the prosecutrix for about two and three days and even there was delay often days in lodging the FIR which was not explained. Not only that even the report of the medical examination was not brought on the record and as such prosecutrix was not relied upon. However, in this case the prosecutrix Parvati Kumari, as soon as was recovered had clearly stated that how the appellant took her away on motorcycle and kept her for two months confined in the house of his mausa and during that time committed rape on her. In such cases of commission of rape there are numbers of decisions of the Apex Court that on the sole testimony of the prosecutrix the accused can be convicted if her statement is trust inspiring and even in such case no corroboration was required. It is also pertinent to note that even informant had no enmity with the appellant so as why the appellant would be falsely implicated by the informant until and unless her daughter was actually not subjected to such act. The victim girl Parvati Kumari has clearly stated in paragraph 1 of her deposition about the rape. She has also stated that whenever she wanted to raise alarm she was threatened to be killed by the appellant.

5. The Court below on the appreciation of the evidence so adduced has rightly come to the conclusion and convicted the appellant for the offence punishable under Sections 366 and 376 of the Indian Penal Code. I do not find any reason to interfere with the judgment under challenge. Accordingly the conviction and sentence passed by the Court below is upheld and this appeal is dismissed.