

Kabirmau Vs. State of Bihar

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Court : Patna

Decided On : Jul-10-1997

Judge : Loknath Prasad, J.

Appeal No. : Criminal Appeal No. 79 of 1990 (R)

Appellant : Kabirmau

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

Loknath Prasad, J.

1. This appeal is directed against the judgment of conviction dated 2.5.1990 passed by Sri Tarkeshwar Prasad, 2nd Addl. Sessions Judge, Jamshedpur in S.Tr. No. 87/88 through which the sole appellant was found guilty under Section 376, IPC and he was sentenced to undergo rigorous imprisonment for 10 years and he was further found guilty under Section 366A, IPC and was sentenced to undergo rigorous imprisonment for seven years and it was further ordered that both the sentences will run concurrently.

2. The prosecution case, in short, is that informant Hansraj Baguri who is the brother of the victim girl submitted a written report to Sakchi Police alleging therein

that on 9.11.86 has sister Gita Kumari aged about 16 years in the evening at about 7 p.m. had gone out to bring water from public hydrant but she did not return. So a sanha entry was made. It was also been alleged that on enquiry the informant could learn that the appellant Kabir Mali who is the neighbour of the informant was also missing from that time and so it was suspected that Kabir Mali with the help of his brother and relations, namely, Chaman Mali, Raju. Paramjit Singh kidnapped her sister for immoral purposes. On the basis of the written report, this case was instituted as against the appellant and three others. During investigations, the victim girl Gita Kumari appeared before the Judicial Magistrate at Jamshedpur on 26.11.86 alongwith accused Kabir Mali and so her statement was also recorded under Section 164, Cr.P.C. and as she refused to go with her parents she was remanded to Ramnd Home at Deogha, However, the police after completing the investigation submitted charge-sheet as against the appellant and three others.

3. The appellant claims himself innocent in the court below and it is his defence that the victim girl was in love with him and she voluntarily left with this appellant and had gone to Calcutta and remained there for some time and their marriage was solemnised under the Special Marriage Act before the Special Registrar and the victim girl was major at that time. It is also the defence that subsequently when the police case was instituted, he alongwith victim girl surrendered in the court of Judicial Magistrate and the victim girl also gave her statement under Section 164, Cr. P.C. admitting that she married the appellant and had left the house voluntarily with him. In that view of the matter, no case under Section 376, IPC or that of kidnapping is made out. However, the trial, court believed the prosecution story and convicted and sentenced the sole appellant in the manner indicated above. But the other three accused namely Chamanlal Mali, Raju Amar Singh, Pramjeet Singh were acquitted of all the charges by the trial court himself. Being aggrieved by and dissatisfied with this order of conviction, the sole appellant preferred this appeal.

4. To prove the case of kidnapping, and rape, on behalf of the prosecution as many as 7 witnesses were examined but P.W 7 is the IO whereas P.W, 1 Hemraj Baguri who is the informant of this case and P.W. 2 Ramesh Baguri other brother of the informant and they are brothers of the victim girl; whereas P,W. 4 is

tendered witness and P.W. 5 Ramu Bagri is mother of the victim girl. P Ws. 1,2 and 5 who are brothers and mother of the victim girl and simply claimed that the appellant was their neighbour and in the evening of 9.11.1986 Gita, the victim girl, and the sister of the informant had gone to fetch water but she did not return and from that time the appellant was also missing from the house and so they suspected that the appellant alongwith his relations kidnapped the victim girl for immoral purposes and, thus the FIR was lodged on 19.11.1986 when the victim girl did not return. So the only evidence of these witnesses are that the victim girl was found missing from 9.11.1986 and suspicious was cast as against the appellant. However, in order to bring home guilty and to prove the entire case, evidence of P.W. 3 Gita who is the victim girl herself is material. This witness has stated that on 9.11.1986 she was living with her parents and had gone to bring water and the appellant who was her neighbour was known to her from before as he is friend of his brother and at that time the appellant came in a jeep and asked her to accompany him for going to market. So she boarded the jeep but on the way the other accused persons who were acquitted, also came and she was by force taken to Calcutta by the appellant where she was confined in a room and on several days she was raped by the appellant against her will and the appellant also obtained her signature on some papers. It is also her evidence that on 26.11.1986 she was brought to Jamshedpur court before the Judicial Magistrate where she was examined under Section 164 Cr.P.C.

5. From the cross-examination of this witness and also from her examination in-chief, this much is clear that the appellant was known to her from before and she herself boarded the jeep for going to the market and she remained in-Calcutta for the several days, but surprisingly she had not raised any alarm. Further more, no doubt this witness has claimed that she was aged about 16 years or so, at the time of occurrence and thus a minor, but from the cross-examination or P.W. 1 it can be said that she was definitely about 19 years of age or so at the time of occurrence. Moreover her statement was also recorded under Section 164, Cr. P.C. by a Judicial Magistrate of Jamshedpur that is, Ext. H and her age was assessed at about 18 years of so. Further more the I.O. P.W. 7 himself submitted a requisition to the headmaster Gujrati School, Jamshedpur where the victim girl was student for sometime and D.W. 2, the In-charge Headmaster proved the Admission

Register and the report which he gave to the police that is, Exts. E and D and from this document, that is the School Admission Register, it can be said that the girl was recorded in the School Register as 12.9.67 that means she was about 19 years at the time of occurrence.

6. No doubt the trial court has relied upon the report, of the doctor who examined the victim girl on 28.11.86 and recorded that the age of the victim girl is 17 years but surprisingly the doctor himself could not be examined. In that view of the matter, the entire report that is Ext. 4 cannot be taken into evidence. If Ext. 4 is to be ignored, then certainly from the other oral evidence and the School leaving certificate it can be said that the victim girl was definitely aged 19 years or so at the time of occurrence and she was major.

7. If the victim girl was major at the time of occurrence then from the evidence of the victim girl herself it can be safely inferred that she voluntarily accompanied the appellant and she also appeared before the Judicial Magistrate after the institution of the case and her statement under Section 164, Cr. P.C. was recorded by Judicial Magistrate, that is, Ext. H. and she has clearly admitted before the Magistrate that she had voluntarily gone with the appellant to Calcutta and also she was married with the appellant. No doubt the victim girl has given an explanation in her evidence that she gave the statement before the Magistrate at the instance of the accused persons, but definitely the victim girl was remanded to Remand Home as she refused to go with her parents and from Remand Home she herself wrote a letter that is, Ext. A to ACJM clearly stating that she had voluntarily gone with the appellant and the appellant is innocent. So in view of this letter of the victim of the victim girl which she definitely written voluntarily and without pressure it can be said that the girl being a major had voluntarily accompanied the appellant to Calcutta and she was in love the appellant. In such a situation the conviction of the appellant under Sections 366A and that of Section 376, IPC definitely illegal and unwarranted.

8. In the result, this appeal is allowed and the conviction and sentence as recorded by the Addl. Sessions Judge, Jamshedpur in S.T. No. 37/88 is hereby set aside and the appellant is acquitted of the charges levelled against him and he is also

discharged from the liabilities of his bail bond.

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