

Sanjay Ram Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Apr-10-2007

Reported in : [2008(1)JCR58(Jhr)]

Judge : D.P. Singh, J.

Appellant : Sanjay Ram

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Arbind Kumar Sinha

Disposition : Appeal dismissed

Judgement :

D.P. Singh, J.

1. Sole appellant Sanjay Ram stands convicted for the offence punishable under Sections 363 and 366A of the Indian Penal Code, and sentenced to serve rigorous imprisonment for one year on each count, by the learned Sessions Judge, Garhwa in connection with Sessions Trial No. 1023 of 2001.

2. Brief facts leading to this appeal are that in the evening of 4.3.2001, a Barat have arrived in the vicinity of the informant in village-Tildag, police station-Garhwa from village Bishunpura. House inmates of informant Nepuri Devi have gone to see Barati while her second daughter Sunita kumari aged about 16 years

remained in the house. The informant returned to find her missing. She came to know that appellant Sanjay Ram, her neighbour was also missing from his house. She started searching her and unable to get any information regarding both of them, lodged a written report before Garhwa police station on 9.3.2001 ultimately.

3. Police registered Garhwa police station Case No. 45 of 2001 under Sections 363 and 366A of the Indian Penal Code, started investigation and finally recovered the daughter of the informant from the company of appellant at Chennai. They were brought back. The appellant was charge-sheeted under Sections 363 and 366A of the Indian Penal Code. The trial of the appellant was committed to the Court of Sessions where he was charged for the said offence on 28.1.2002. The appellant pleaded not guilty and claimed the girl has gone out of her freewill and they were married in a temple living as husband and wife. However, the learned trial Court after considering the evidence found and held that the girl was not major and recovered from his possession. Therefore, he is guilty for the offences and sentenced to serve rigorous imprisonment for one year on each count.

4. This appeal has been preferred mainly on the grounds that the learned Court below has not considered the fact that the girl was married with appellant Sanjay Ram and no offence could be committed because of love relationship existence between them. It is also submitted that in view of established fact that Sunita Kumari was having intimate relationship because of love with the appellant, he should have been acquitted of the charges. A large number of handwritten letters marked Ext. B series along with a number of photographs marked Ext. C series regarding the marriage have been pointed out. The marriage certificate issued by temple marked Ext. D series as well as the defence witnesses were cited. Mr. Arbind Kumar Sinha, learned Counsel for the appellant, pointed out that in such facts established before the trial Court, the conviction of appellant be set aside.

5. I have gone through the materials on records minutely. In the present facts, the elopement of Sunita Kumari with appellant Sanjay Ram is not disputed, rather, admitted. Learned Counsel stressed before me that in case the girl was major, no offence could be made out. In this context, reliance was placed on the evidence of Dr. Umeshwari Kumari (P.W. 6) where she has opined that the age of victim

Sunita Kumari may be between 17 to 18 years. The prosecution has asserted that she was only 16 years of age and in support of this fact Ext. 2, a certificate showing her date of birth on 5.1.1985 issued by Headmaster of Gowawal High School. Furthermore, her statement before the trial Court as P.W. 1 demolishes this defence. She has been assessed by the Court aged about fourteen years and asserted by herself seventeen years in February 2002. She has asserted that she was forced to go with the appellant and she remained with him for twelve days at Chennai where she was forced to sexual intercourse. She further asserted that she has been recovered by the police from his house and still being threatened by the appellant. According to her vide paragraph-9, she has given a different statement before the Magistrate under Section 164 of the Code of Criminal Procedure because of threats made by the appellant. She has denied that she has got any relationship with the appellant before this occurrence vide paragraphs-11 and 12. Thus the plea advanced before me by the learned Counsel for the appellant appears to be farfetched and not acceptable.

6. P.W. 2, the mausi, P.W. 3, the mother, P.W. 4 another mausi of the victim has supported the prosecution case beyond doubts. Even without going through these materials on record, the fact remains admitted that the appellant has taken away Sunita Kumari from legal guardianship of her parents to Chennai where she was subjected to sexual intercourse, as per defence, after marriage and according to victim without her consent. The trial Court has considered all these aspects vide paragraphs-19 and 20 of the impugned judgment and came to hold that the girl was minor at that time. Therefore, the appellant has committed an offence under Sections 363/366A of the Indian Penal Code. However, keeping in view of the defence, the appellant has been sentenced to rigorous imprisonment for one year on each count. I do not find any reason to differ with the view taken by the learned Court below. The sentences passed against the appellant are on lower side. As such, I find that the present appeal has got no merit and deserves to be dismissed.

7. In the result, the conviction of the appellant along with sentence passed by the learned trial Court against him is hereby, affirmed and the appeal is dismissed.

8. The bail bond of appellant Sanjay Ram is hereby cancelled and he is directed to surrender forthwith before the Court below for serving out the sentence. The learned Court below is also directed to take all coercive steps in accordance with law for the apprehension of appellant to serve out the sentence.

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