

Mohamad Sazid vs The State Of Jharkhand) on 24 April, 2024

Author: Ambuj Nath

Bench: Ambuj Nath

Cr. Appeal (SJ) No. 1003 of 2012

Against the judgment of conviction and order of sentence dated 24.09.2012 and 25.09.2012 respectively passed by Shri Ram Sharma, learned Additional Sessions Judge-VI, Dhanbad in S.T. Case No. 452 of 2006.

Mohamad Sazid

Appella

Versus

1. The State of Jharkhand)

2. Sukhdeo Mahto

Respond

For the Appellant: M/s. Shadab Eqbal, Atefa Parvez, Anshuman Om, Haroon Rasheed, Advocates
For the Resp.-State: Ms. Snehlika Bhagat, A.P.P

PRESENT Hon'ble Mr. Justice Ambuj Nath

By court: This appeal is directed against the judgment of conviction and order of sentence dated 24.09.2012 and 25.09.2012 respectively, passed by Shri Ram Sharma, Additional Sessions Judge-VI, Dhanbad in S.T. Case No. 452 of 2006 arising out of Dhanbad (Bank More) P.S. Case No. 746 of 2005 corresponding to G.R. No. 4692 of 2005, holding the appellant Mohamad Sazid guilty for the offence under section 366A and 376/511 of the Indian Penal Code and thereby sentencing him to undergo R.I for five years along with a fine of Rs. 5,000/- for each of the offences. In default of payment of fine, he was directed to undergo S.I for each of the default. Both the sentences were ordered to run concurrently.

2. Prosecution case was instituted on the basis of the written report of the Informant Raj Kumar Prasad, alleging therein that on 29.11.2005, his daughter aged about 16 years old went missing. Suspicion has been raised upon the appellant that he must have enticed his daughter with an intention to marry her.

3. Statement of the victim was recorded during the trial as P.W-9. She has stated that at the instance of the appellant, she had accompanied him to Asansole where she was forced to sign some documents. She was kept in a hotel for 4-5 days. During this period, appellant has also attempted to establish forceful sexual relationship with the victim. However, on 05.12.2005, both of them came to Dhanbad and sent to the police.

In her cross-examination, she has stated that a ticket for going to Asansole was purchased by the appellant and she was also standing there besides the railway counter and she did not raise any alarm. She has stated that several passengers were present at the platform, but she did not raise any alarm. She has further stated that she was taken to Asansole court, but she did not raise any alarm there. She has clarified that she was under the influence of the appellant at the time when he was taken to the police station.

4. Dr. Rita Guta (P.W-7) has medically examined the victim. According to this witness, radiological age of the victim was 18 years.

5. Ms. Snehlika Bhagat, learned A.P.P has stated that the victim has completely supported the allegation as made out that she was enticed away by the appellant and also that the appellant had attempted to rape her. She has stated that as per her school certificate, her age was 16 years.

6. Mr. Shadab Eqbal, learned counsel for the appellant, submitted that the victim was major at the time of occurrence and she was well aware of the consequences of her act. It was submitted that from her statement recorded during the trial, it will be apparent that she had willingly left her father's house and had accompanied the appellant to several places including Asansole Court. It is also evident that she has not raised any alarm that she was forcibly taken by the appellant. He has also drawn attention to the statement of the victim recorded during the trial wherein she has stated that the appellant could not establish physical relationship with her because he was weak.

7. Radiological age of the victim has been assessed to be 18 years. From the tenor of her cross-examination, it is apparent that she had willfully left the house of her father and had accompanied the appellant to various places. She has further stated that she had opportunity to raise alarm at various public places, but she has not done so. Being major, she was fully aware of the consequence of her act. According to the victim, appellant could not sexually assault her due to his physical weakness. This fact further reflects that there were no intervening circumstances in the attempt of the appellant not to commit rape upon the victim.

8. Considering the aforesaid facts, I am of the opinion that the learned Trial Court has erred in holding the appellant guilty of the offences under sections 366A and 376/511 of the Indian Penal Code.

10. This appeal is allowed. The judgment of conviction and order of sentence dated 24.09.2012 and 25.09.2012 passed by the learned Trial Court is set aside. Appellant is on bail. He and his bailors are discharged from the liability towards the bail bonds.

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

(Ambuj Nath, J) Jharkhand High Court, Ranchi Dated 24th April 2024 Ranjeet/