

Sessions Case No. 121 of 2013

IN THE COURT OF 3RD ADDITIONAL SESSIONS JUDGE PURNEA
DISTRICT. PURNEA, BIHAR
SESSIONS CASE NO 121/2013
(CIS- NO. 1439/2013)

IN THE MATTER OF:-

State, through Shatrughan Das-----Informant

Vs

1. Nityanand Mandal aged about 36 years -----Accused

PS- Kasba

FIR No. 129/2012

U/S- 363, 366 A, 367, 370, 376/34 of IPC

Cognizance U/s 363, 366 A, 367, 370, 376/34 of IPC

DISTRICT- Purnea

Ld Counsel for the Prosecution:- Smt. Pusp Lata Pushp-----Additional P.P.

Ld Counsel for the Accused: - ---Sri Uttam Lal -----Advocate

DATE OF JUDGMENT: 23.02.2016

PRESENT: MD AJAZUDDIN

JUDGEMENT

1. The accused stands charged for the offences punishable under section 363, 366 A, 367, 370 and 376 of Indian Penal Code. For maintaining secrecy of identification of the victim girl she is herein after mentioned as victim girl in place of her name.

2. The prosecution's case, in brief, as contained in the written report of the informant Shatrughan Das is that the informant's 14 years daughter (victim girl) became trace less from the informant's house at Garhbanaili Rani Mil, PS Kasbah District Purnea, from 7 PM, one day before the Deepawali of 2011. In spite of search, she could not be traced out. All of a sudden on 16.08.2012 one Janak Mandal of Jalalgadh Block, working at Sonipat Haryana, any how informed the informant that his daughter (victim girl) have been forced to work in a Kothi at Sector 15 of Sonipat Haryana and she have been sold out and after Eid she would be sent some where. On receiving this information, he proceeded on 17.08.2012 and reached at Sonipat on 19.08.2012 and contacted to Janak Mandal and with the help of SHO Sonipat police station victim girl was recovered from the house of Nityanand Mandal at Sector 15 and the accused was also arrested and brought to police station. In the evening on 19.08.2012 the girl was handed over to the informant and

he asked from his girl. Then she told all about the occurrence that in the evening while coming from the road to home at a lonely place one tempo stopped near her over which five persons were boarded. Out of them, three persons put a handkerchief on her mouth from which an strange smell was coming and she became senseless. After some time noise was heard to her and then she found that she was at Katihar station and about 5 or 6 persons were sitting including one female. All of them taken her at some unknown place and kept there for four days. In the evening of the Chhat Nityanand Mandal, Mamta Devi wife of Nityanand Mandal, Sanjit Mandal, Ranjit Mandal, Kunia Mandal, Awdhesh Mandal all of village Henu Hingna Tarona Basti, P.S. Simraha, District Araia and Torai Mandal @ Shiv Narain Mandal son of Medi Mandal of village Sarochia, P.S. Kasbah, District Purnea, taken her to Sonipat and taken a house on rent in sector 15 in which she was engaged in cooking of food and she and they were living there. After some days, she was engaged for kitchen work in lieu of Rs. 5000/ per month in another Kothi. The money of which was received by Nityanand Mandal. The wife of Nityanand Mandal came to her house in Bihar. In the meantime Nityanand Mandal committed rape with the daughter of informant by which she suffered much pain. In Ramzan 2012, she was sold in the hand of one Muslim for Rs. 40,000/ money was also paid but due to Ramzan she was not handed over to him. Attempt was made to kill her also but due to intervention of Sonipat police her life could be saved. On the basis of written report of the informant, Kasbah P.S. Case number 129 of 2012 dated 13.09.2012 was instituted against seven accused persons named in the written report. After investigation the police submitted charge sheet under section 363, 366 A, 367, 370, 376/34 of Indian Penal Code against the accused Nityanand Mandal, keeping investigation pending against the remaining six accused persons. Accordingly, the learned CJM Purnea, took cognizance on 10.01.2013 and the case of supplementary investigation was separated from the original. Vide order sheet dated 17.01.2013 of learned CJM Purnea, the case record of Nityanand Mandal was committed to the Court of Sessions. Accordingly, Sessions Case number 121 of 2013 was instituted and by the order of learned Sessions Judge Purnea, the case record was transferred to the Court of learned Adhoc Additional Sessions Judge IIIrd Purnea, for disposal. Ultimately, by the order of learned Sessions Judge Purnea, the case record received to the Court of learned 2nd Additional Sessions Judge Purnea on 10.09.2015 to which I am successor.

3. On dated 13.02.2013 charge was framed under sections 363, 366A, 367, 370, 376 of Indian Penal Code against the accused Nityanand Mandal. The charge was read over and explained to the accused in Hindi language to which he plead not guilty and claimed to be tried.

4. On closing of prosecution evidence the statement of accused was

recorded under section 313 of Criminal Procedure Code on 29.06.2015. The case of defence is total denial of the whole occurrence. Accused claimed to be innocent.

5. Now the point for determination is that whether the prosecution have been able to prove the charges levelled against the accused beyond shadow of all reasonable doubts?

FINDINGS

6. The prosecution has examined altogether seven witnesses in support of it's case namely, PW1 Shatrughan Das, PW2 the victim girl of this case, PW3 Amrendra Kumar Amar, PW4 Janak Lal Mandal, PW5 Dr Poonam Prabha, PW6 Kiran Kumari and PW7 Jai Krishnan Gurung.

7. Following documents have been proved on behalf of prosecution;

Exhibit 1 is the signature of Shatrughan Das on his statement to Bal Kalyan Samitee Purnea dated 01.09.2012,

Exhibit 2 is the signature of Shatrughan Das on written report,

Exhibit 3 is the signature of victim girl on her statement to Bal Kalyan Samitee Purnea dated 01.09. 2012,

Exhibit 4 is the endorsement of registration of case on the written report,

Exhibit 5 is the FIR,

Exhibit 6 is the medical examination report of victim girl,

Exhibit 7 is the statement of victim girl,

Exhibit 8 is the report of Bal Kalyan Samitee Purnea dated 10.09.2012,

Exhibit 9 is the application of victim girl,

Exhibit 10 is the report of Child welfare Committee Purnea,

Exhibit 11 is the written report.

8. No evidence oral or documentary adduced on behalf of defence.

9. Shatrughan Das (PW1), also happens to be informant of this case, said in his evidence that the victim victim girl is his daughter who suddenly became trace less from 7 PM of one day before the Deepawali of 2011, she had gone to fetch matches. After great search he could not find out her. He went to give information at the Kasbah police station but they did not recorded his information and ousted him. (Paragraph 1) The peoples of Child Helpline also went to the police station but they did not institute FIR. They had only taken the photograph of his daughter and taken his thumb impression on a blank paper and kept it and did not institute the FIR. After 10 month on 16.08.2012 Dev Narain Mandal the husband of sister of Janak Mandal, informed him that his daughter is working as made servant in the house of Nityanand Mandal and his wife Mamta Devi in sector number 15 Sonipat Haryana and she is in trouble. She have been sold to one Muslim and after Eid she would be sent to some other place. (Paragraph 2) This information was given by Janak Mandal who was living at Sector 15 Sonipat Haryana at that time. Then on 17.08.2012 along with Dev Narain Mandal he

proceeded and on 19.08.2012 reached to Sonipat and met to Janak Mandal. (Paragraph 3) With Janak Mandal he went to Sonipat Sadar police station and told all about to the Bara Babu then they came to the house of Nityanand Mandal at sector 15 where police also arrived and the victim girl was recovered. Mamta Devi and Nityanand Mandal were also arrested. The remaining accused Ranjit, Sanjit, Punianand, Awdhesh Mandal went away. Victim girl was handed over to him and the apprehended persons were taken to police station. Victim girl told that when she came out of house for fetching matches 5 or 6 persons came by tempo and handkerchief was put on her nose and she became senseless. When she came to sense, she found herself at Katihar. She told that with her Nityanand, Ranjit, Sanjit, Mamta, Torai Mandal were also present and they taken victim girl to Sonipat. And taking a house on rent in sector 15 they kept her there. There victim girl was engaged in kitchen work. She was also engaged as made servant to some other house for Rs. 5,000 which was received by Mamta Devi. She was sold to one Muslim and the money was taken in advance. In the meantime Mamta came to Bihar then Nityanand Mandal attempted to commit rape with victim girl. (Paragraph 4) He taken the girl to Child Welfare Committee Purnea. At Purnea his statement was recorded there and statement of victim girl was also recorded. He identified his signature on his statement which have been marked as Exhibit 1. Then he went to SP Purnea then SP Purnea sent him to Kasbah police station. He gave an application at Kasbah police station. The application was written by Chhota Babu of Kasba police station. He identified his signature on the written report which have been marked as Exhibit 2. (Paragraph 5) He identified Nityanand Mandal present in the court. In his cross examination he said among others that he deals ticli sindur in his shop near Garhbanaili. Distance of Garhbanaili market from his house is less than 1 km. (Paragraph 6) The victim girl went to Garhbanaili market at 6 PM for fetching matches and he and his wife were at the shop. Neetu was alone at home. He went to Sonipat one-time in connection with this occurrence after 10 month of the occurrence with Dev Narain Mandal. Dev Narain Mandal got information from his brother-in-law from Sonipat that one girl is in trouble who belong to Garhbanaili she have been maltreated. After receiving this information, he went to Sonipat Sadar police station. At the Kasba police station he mentioned about the Sonipat police station. The SHO of Sonipat Sadar police station said that his case will not proceed here and he was asked to file case in Bihar. (Paragraph 7) After 10 months of becoming trace less of his daughter, the victim girl he got information and went Sonipat alone. Again he said that he went with Dev Narain Mandal who is his villager. Dev Narain Mandal had lived in Sonipat so he went with him. (Paragraph 8) The victim girl is not educated she knows to write her name only. He given information of her becoming traceless to Ksbah police station but no action was taken

then he said to the Mukhiya Surpanch. (Paragraph 9) He gave a written application at Sonipat police station on the basis of which the Sonipat police recovered the victim and handed over to him. Mamta Devi and Nityanand Mandal were apprehended. After taking money from Mamta Devi and Nityanand Mandal the police released them. Then taking the girl he came home and then to Child Welfare Committee Purnea along with girl. The statement of victim girl was taken by Sonipat police and also interrogated from him. (Paragraph 10) He knows Janak Mandal from the time when his girl was recovered from Sonipat. He met Janak Mandal at Sonipat. He given the address of his house as Sector number 15 Kothi number 40. The Sonipat police did not interrogated with Janak Mandal. He went to Sonipat police station with Janak Mandal. He did not talk with the owner of Kothi in which victim girl was working. He did not went there. (Paragraph 11) He and Dev Narain Mandal firstly reached to the house of Janak Mandal at Sonitpat and he first time met Janak Mandal there. Earlier to that, he never talked with him. He cannot say the boundary of his house. It consists of one room. The distance of Kothi from his room is about 1 km. Janak Mandal offered him food. Dev Narain Mandal stayed there. (Paragraph 12) He lived at the house of Janak Mandal at Sonipat for 2 or 3 days then came to Purnea. He boarded from old Delhi on Awadh Asam and came to Katihar. He taken the ticket of Amrapali. He reached to Katihar at 10 PM and came to house. In the morning he talked with victim girl. At the train Neetu told him that she have been beaten and hard work was taken from her and molested her. (Paragraph 13) After coming Purnea, he went to police station but he was not heard there and one unknown person told him to go to Child Welfare Committee Purnea, then he went there. He did not given any written application. The statement of him and his girl was taken by Kiran Madam and Depak Babu taken his statement. The statement of father and victim girl was taken one by one. He was stating and Deepak Babu was writing. After writing he read over to him and before him he put his signature. Firstly, the statement of victim girl was recorded then taking the copy of his statement he went to the SP Purnea. S.P. Saheb reduced and given him and asked him to go to police station. On that day no other was present. (Paragraph 14)

10. Victim girl (PW2), said in her evidence that the occurrence taken place with her one day before the Dipawali of 2011. On that day in the evening, she went to the shop of Muzaffar for fetching matches. After taking matches she was returning, when near Thakurbai one tempo arrived and four persons came down and put a cloth on her nose by which she became senseless, as smell was coming from the cloth. The faces of the four persons were covered by a gamchhi. She came to sense at Katihar railway station in the train. At that time, six person including one female were present there. That female was named Mamta Devi. Out of them one was Nityanand

Mandal. They again caused her senseless and then she came to sense at Sonipat. She learn the name of that place from the talking of those persons. Then they taken one room and kept there for 4 or 5 days, then taken her at next place, perhaps Sector number 14 or 15. There, they were telling the peoples that they have brought her for work. Then she was kept as made Servant in the house of a bank employee. The remuneration was Rs. 5000/ and the money was kept by Mamta Devi and was not given to her. Mamta Devi used to take her at work and brought from there. Nityanand also went with her. At sector 15 Nityanand, Mamta Devi, Awdhesh, Torai Mandal, Ranjit and Sanjit were living. Mamta Devi used to return home also. Beside the work of made servant she used to sent her at Kothi for dancing also. When ever Mamta Devi used to come home Nityanand Mandal used to commit rape with her. Then Nityanand Mandal sold her to some Muslim for favour of 40,000/ rupees. That Muslim said that he will take her after Eid. Nityanand Mandal regularly did wrong work with her. Then her parents reached to her with police. Villager was living at Sonipat who informed to her parents. (Paragraph 1) When she came home her parents taken her to police station but her case was not taken. Then she was taken to Child Welfare Committee Purnea where her statement was taken. She identified her signature which have been marked as Exhibit 3. (Paragraph 2) Her medical examination was done at Sadar hospital Purnea. (Paragraph 3) She identified Nityanand Mandal present in the court. In her cross examination, she said that she have been married six-month ago. She learn dancing at Sonipat. (Paragraph 5) She regularly used to go to the shop of Muzaffar for bringing matches. (Paragraph 6) The distance of her house from Thakurbari is half kilometer and from the shop of house of Muzaffar 1 km. (Paragraph 7) Her father used to deal the bangle and tikli. The shop is at a distance of one km from house. There are ten houses around her house and there are shops of tikli and betels. (Paragraph 8) Where she was boarded on tempo there was no population. (Paragraph 9) Many passengers were sitting at the train but she was unable to speak, the other persons were speaking. She was boarded on the train in the night and she was brought down at Sonipat. After coming down from train she went out on foot, she did not taken tea or breakfast in the train. She did not given any gesture to the passengers of train. When she was taken to room by tempo the room was small. In that room six persons were living. Mamta Devi was female and other five were male. Including her there were seven persons and the bed were lay on the ground. There were other houses also but they had not allowed her to talk with them. (Paragraph 10) The place where she was kept and the place where she used to go for work consumed one hour in going. She used to talk with the female owner of house whole day she remained there. The house owner used to talk with her but very little. The first payment was taken by Mamta Devi and thereafter before

the closing of month she used to receive the payment. That was a big Kothi consisting of five rooms and there were eight persons both male and female were living in the Kothi. She used to clean the room and cook the food. (Paragraph 11) His father along with one person came to meet her she do not know the name of his companion. His father met her at Sonipat where she was kept. She talked with father, who came with police of Sonipat Sadar police station who were two in number. There was no talk of her with police. The accused persons were apprehended by police. She have been released and sent to Purnea along with parents. She do not know the name of train. That train directly came from Sonipat to Purnea. She did not left the train in the way. She reached from Purnea station to Garhbanaili by train at about 10 PM. Then in the morning went to Kasbah police station along with her parents but the police chide her and ousted her. Then they came to home. Then after two days they went to the Child Welfare Committee and told all about the occurrence. As she stated here had also stated there. (Paragraph 12) The policeman taken her for medical examination and on that day also interrogated her. The police was consist of male and female both and taken her to Sadar Hospital Purnea. Same day Doctor examined her but did not examined her mouth ear and teeth. She do not remember the time of examination. (Paragraph 15) At the time of medical examination, her father was with her including police. (Paragraph 16) For the confirmation of rape, the police taken her for medical examination. (Paragraph 17) She denied that her father sold to some one at Sonipat and she falsely implicated these accused. (Paragraph 18)

11. Amrendra Kumar Amar (PW3) the investigating officer of this case said in his evidence that on 13.09.2012 he was posted as P.S.I. at Kasbah police station and on that day he was entrusted with the investigation of Kasbah P.S. Case number 129 of 2012. (Paragraph 1) That police case have been instituted on the basis of written report of Shatrughan Das. The endorsement on the written report is in the handwriting and signature of Subodh Kumar Thakur, the SHO to which he identify. (marked as Exhibit 4). (Paragraph 2) He endorsed that the FIR is in the handwriting of Thana Munshi Subodh Kumar Choudhry and in the signature of SHO Subodh Kumar Thakur to which he identify.(marked as Exhibit 5). (Paragraph 3) With the written report of the informant, the copy of letter of chairman of Child Welfare Committee is attached. The another document is the copy of statement given by the victim girl at Child Welfare Committee is attached. (Paragraph 4) After taking the charge of investigation, he recorded the restatement of informant, the victim girl and then proceeded for the place of occurrence. He recorded the statement of witness Md Riaz at the place of occurrence. Reached at the place of occurrence. The place of occurrence is the brick soling road near Thakurbari situated within Rani Mill of Kasbah

police station bounded by east Thakurbari Mandir, west house of Balmukund Jha, north house Nand Kishore Rai south house of Rajesh Rai. He recorded the statement of victim taken by Chairman Child Welfare Committee in the case diary, thereafter, he get the victim examined by Doctor at Sadar Hospital Purnea and obtained the examination report and mentioned in the case diary. Thereafter, he taken the statement of witness namely Rajendra Rai, Nand Kishore Rai. He arrested Nityanand Mandal at Garhbanaili chock and recorded his defense statement and forwarded him. He submitted charge sheet under section 363, 366A, 367, 370, 376/34 of IPC against Nityanand Mandal, keeping supplementary investigation pending against others. (Paragraph 5) During supplementary investigation, he recorded the statement of witness Jayakrishna Gurung and on his transfer he handed over the charge of investigation to S.H.O.. He identified the accused Nityanand Mandal present in the court. (Paragraph 5) In his cross examination, he said that the informant Shatrughan Das had filed a case of kidnapping of his son earlier to this case or not he don't know. He do not know that in that earlier case Shatrughan Das had compounded with the accused. (Paragraph 6) The place of occurrence of this case is within Garhbanaili Rani Mill near Thakurbari. He do not know the date or time of occurrence. It was one day before the Deepawali. (Paragraph 7) How much days after the occurrence FIR was instituted he did not calculated. How month after it was instituted he do not calculated. He knows the case was filed after 11 month. Regarding the period of 11 month, he did not interrogated from the informant. He did not asked about the delay in filing of the case. (Paragraph 8) He inquired about Janak Mandal in the investigation, his father's name is Phuleshwer Mandal village Dhingrai PS Simraha district Araia. (Paragraph 9) He did not recorded the statement of Janak Mandal of Jalalgadh. During investigation he did not went to Sonipat for verification regarding the information of Janak Mandal. He did not investigated regarding taking labour at sector 15. The victim Neetu Kumari was sold their he did not investigated on this point. (Paragraph 11) In who's house at Sonipat the victim girl was working or to whom she was sold he did not investigated on these points. Nityanand Mandal taken the payment of Rs. 5000 of Neetu Kumari he did not investigated on this point. (Paragraph 12) For releasing his daughter the informant met to SHO Sonipat or filed any petition or the victim was recovered from the house of Nityanand, he was arrested, the victim was handed over to Shatrughan Das, he did not investigated on these points. The informant went to Sonipat or not he did not verified. When the informant went or come he did not investigated on this point. (Paragraph 13) He did not interrogated to the victim as to how she came in concern with the accused persons of Araia. (Paragraph 14) He inspected the place of occurrence mentioned in the FIR which is a lonely place. In the FIR the place of occurrence is written Rani Milik, again after

reading he claimed that the place of occurrence is near Rani Milik is not written in the FIR. He did not investigated about the driver of the tempo. (Paragraph 15) On which date the victim reached to her house, he do not know. After how many days of her arrival she came to police station he do not know. (Paragraph 16)

12. Janak Lal Mandal (PW4) said in his evidence that he has been living at Sonipat from about 26 – 27 years where many persons of his village are living and used to meet each other. He knows Satyanarayana, Mahanand Raju and others.(paragraph 1) He learn about the occurrence in 2012 from Dev Narain who is working with him. who said that one girl of Garhbanaili is here. His one cousin brother-in-law is living at Garhbanaili Sarochia and he called him on phone about the girl to find out as to who's daughter she is. That girl was living at the house of Nityanand and used to do work. One day after Dev Narain told him that the girl went from here and he is coming with the parent of the girl to Sonipat. On 19.08.2012 Devan and father of girl reached to him and they went to police station and informed. Then they went to the house of Nityanand and same time two police personals came from Sonipat police station. The police arrested the victim girl, Nityanand and his family and taken them to Sadar police station. The police did not taken action and asked them to leave and decide the matter between themselves. Thereafter, 5 or 10 persons sat at Sonipat and decided that how many days the girl remained there and earn he has to pay. Nityanand taken time of two days but he did not given the wages and said that he is going home where he would give the wages. Thereafter, Nityanand the victim girl and her parents went from there. After 10 to 15 days a phone call of Bihar police came to him and he replied that they have not followed the decision here and they are free to do what they want. He also told about the occurrence to the police on phone as he stated in the court after two or two and half month he came and police came to his house and interrogated to him and same matter he told to the police. He identified Nityanand Mandal. He denied to identify any other. He can identify wife and brother in law of Nityanand Mandal. (Paragraph 2) In his cross examination he said that Nityanand was known to him from before and he knows about his domicile also. (Paragraph 3) The house of Devan is at village Hingna, PS Rani Ganj district Araia who was living at Sonipat. (Paragraph 5) Before telling by Devan he had seen the victim girl at the house of Nityanand and at that time she was sitting at the house of Nityanand. She did not talk with him. He inquired from Nityanand as to who was she and he said that she is the daughter of his wife's sister. (Paragraph 6) One another Devan to home he called on phone at Araia is son-in-law of his uncle. (Paragraph 7) The police did not recorded his statement or statement of Nityanand and his wife at Sonipat. They did not went at Sonipat police station. (Paragraph 8) When he went at the house of Nityanand, Devan, father

of victim girl and the peoples of society were with him. He do not remember the name of the peoples of the society. (Paragraph 9) He did not went to the police station for releasing Nityanand or the girl. Satyanarai went at Sadar police station Sonipat. (Paragraph 10)

13. Dr. Rupam Prabha (PW5) the medical Officer who had examined the victim girl said in her evidence that on 14.09.2012 She was posted at Sadar Hospital Purnea. Same day she examined the victim girl daughter of Shatrughan Prasad Das village Rani Milik Garhbanaili P.S. Kasbah District Purnea by the order of Depute Superintendent of Sadar Hospital Purnea. She was brought and identified by sub inspector Amrendra Kumar Amar. She found the following on her examination at 3:30 PM. Mark of identification a till over right side of upper lip, a till on the right scapular area. Body building- average. Breast developed. Pubic and auxiliary here present. Mark of injury- no external injury on any part of body or her private part. Old rapture of Hyman was found. Hyman wall swabs were taken and sent to Sadar Hospital Purnea for microscopic examination for presence of spermatozoa. Menstrual history -LMP 20.08.12. Per abdomen- abdomen empty. Vagina admit one finger. Report AVS -spermatozoa was not found. X-ray as per radiological report age is between 15 to 16 year. Therefore, depending upon above finding there is no sign of rape at the time of examination although possibility could not be excluded as age is between 15 to 16 year. On her endorsement that the medical examination report is in her hand writing and signature the same have been marked as Exhibit 6. (Paragraph 1) In her cross-examination she said that the case number in which the victim was examined is not mentioned on the report. (Paragraph 2) The police told her about the committing of rape but she has not mentioned it in the report. The police did not mentioned the name of accused persons before her. (Paragraph 3) The possibility may be consenting sex.(Paragraph 4)

14. Kiran Kumari (PW6) the Chairman of CWC, said in her evidence that on 01.09.2012 she was Chairman of Child Welfare Committee. On that day Shatrughan Das along with his daughter the victim girl aged about 14 years appeared before him with an application. He taken the statement of girl. He endorsed that the statement is in his hand writing and signature and over which the victim girl put her signature and the committee members Dipak Kumar, Shekhar Ashutosh and Bikram also put their signature to which she identify. (marked as Exhibit 7) Same day, the member of the committee Dipak Kumar recorded the statement of Shatrughan Das. She endorsed that the statement of Shatrughan Das is in the handwriting of Dipak Kumar and beers the signature of committee members Bikram Kumar, Ashutosh, Dipak Kumar and herself signature to which she identified. (marked as Exhibit 8). After recording the statements, the file was opened and order sheet was written from 01.09.2012 to 03.09.2012. On her endorsement the same have

been marked as Exhibit 9. Regarding this occurrence she given the application to the District Magistrate. She endorsed that the application is in her hand writing over which her signature and signature of Dipak Kumar, Bikram Kumar, Ashutosh present to which she identify.(marked as Exhibit 10). In course of her cross examination, she said that in Exhibit 9, the name of the kidnappers of the victim girl are not mentioned, nor the person who committed rape with her. (Paragraph 4) It is not mentioned in the application as to at where she lived at Sonipat. It is not mentioned as to who called on phone to the father of the victim girl and he went to Sonipat and with the help of police of Sonipat he recovered Neetu Devi from the house of Nityanand which released her in favour of her parent. (Paragraph 5) In Exhibit 7, the date of occurrence is not mentioned who did what is mentioned in the statement. Nityanand , Awdhesh, as seller and Nityanand Mandal, Sanjit Mandal, Ranjit Mandal and Punia Mandal, Awdhesh Mandal, Torai Mandal and Mamta Devi have been mentioned as taking away. She did not ask from her as to accused persons were known to her from before or not. (Paragraph 6) She did not ask from her as to why she did not approached to the police. (Paragraph 7) She asked from her as to she raised alarm or not or told to any body or not, she said that when ever she was weeping she have been beaten. Beside that she said nothing. (Paragraph 8) The victim or her father has not shown any evidence in support of their coming from Sonipat nor told the specific date of their return from Sonipat. (Paragraph 9) The Child Welfare Committee is running under section 29 of J.J. Act. (Paragraph 10) The Committee has no right to investigate but has tried to search to provide security. (Paragraph 12)

15. Jai Krishn Gurung (PW7) said in his evidence that the application is in his hand writing and signature to which he identify which was given at Kasbah police station marked as Exhibit 11. In his cross examination he said that he wrote in the application on behalf of Shatrughan Das but he has not written as to in what capacity he has written the application. (Paragraph 2) In this application he has not written that Shatrughan Das having come to Child Helpline dictated the application before the chairman. (Paragraph 3) Since Shatrughan Das was illiterate so as per his asking he had written the application. (Paragraph 4) He has not written in the application that the statement of Shatrughan Das have been separately recorded at Child Helpline. (Paragraph 5) They inquired on behalf of Childline about the statement of the application and mentioned in the register of Childline. No such document is attached with the application about that register. He can file the same in the court within 5 or 6 days. (Paragraph 6) He had gone to the house of Shatrughan Das but has not mentioned in the application.(paragraph 7) It is not written in the application that the same have been read over to him and then he put his signature. (Paragraph 8) On the exhibit he identified the

signature of the victim girl.(paragraph 9). It is his duty to write application of any complainant. (Paragraph 10)

16. The learned lawyer for the defence argued that the prosecution case is full of inconsistencies. The prosecution evidence suffers from inconsistencies and contradictions omissions and additions on material points. The case have been lodged after an inordinate delay of about ten months from the date of occurrence and no satisfactory explanation given on behalf of prosecution for such inordinate delay in lodging the FIR. There is no corroborating evidence on the record that actually the victim girl was kidnapped and actually she was recovered by Sonipat police. The investigating officer also did not bother to investigate on these points and collect corroborative evidence. Therefore, the prosecution has miserably failed to prove the charges levelled against the accused beyond shadow of all reasonable doubts.

17. On the other hand the learned Addl. Public Prosecutor argued that the informant is a very poor person and so he cannot invoke the ad of the police though he had knocked the door of police but the police did not taken any action so he became silent treating the same as his destiny. So far as the irregularities in the investigation is concerned due to the mistakes of investigating officer the prosecution case cannot fail. He further argued that there is nothing in the evidence of victim girl to impeach the credibility of her evidence. The informant and Janak Lal Mandal has fully corroborated her evidence. Though Dev Narain Mandal or Devan Mandal could not be examined but due to none examination of those persons the prosecution case cannot fail. He further argued that in cases of human trafficking it is very difficult for the investigating agency to connect all the links of the entire set of circumstances because there are several set of persons who are involved in human trafficking and therefore if any link is found missing that should be ignored.

18. I carefully scrutinized the evidence of Pws. From perusal of the evidence of the victim girl I find that she has fully corroborated the FIR and the statement of her father Shatrughan Das. In fact only Neetu Kumari is the sole eye witness of the entire set of circumstances. She has not named the persons who had kidnapped her from near the Thakur Bari. She has name two persons out of those persons, who had taken her from Katihar to Sonipat and thereafter taken labour from her. She has specifically stated that Nityanand Mandal and Mamta Devi taken her to Sonipat. And Nityanand had committed rape with her in absence of his wife Mamta Devi. She has named Awdhesh, Torai Mandal, Ranjit and Sanjit who were living with Nityanand and Torai at Sonipat. Though, there are some inconsistencies in her evidence but those inconsistencies are related to the minor facts of the entire set of circumstances and are not able to impeach the credibility of her evidence. This is not out of

place to mention here that the victim girl is aged about 15 to 16 years at the time of her examination and she is illiterate, knows to write her name only. Therefore, such minor inconsistencies are bound to occur in her evidence. The defence has failed to explain that when the accused was belonged to different locality and they was not aware to the victim girl or her father then how and why he she has taken their the names as culprits of the entire occurrence. Therefore, I see no reason to disbelieve the evidence of the victim girl. Further the evidence of Shatrughan Das corroborates the statement of the victim girl so far as it relates to her becoming trace less from her house and her recovery from the house of Nityanand Mandal and Mamta Devi. The evidence of Janak Lal Mandal also corroborated the statement of the victim girl and Shatrughan Das so far as it relates to her presence at the house of Nityanand Mandal and Mamta Devi and her recovery from the house of Nityanand Mandal and Mamta Devi. He has not mentioned the names of other co accused persons. The evidence of Doctor also corroborated that the age of the victim girl was between 15 to 16 years at the time of examination and therefore at the time of her becoming trace less her age was about 14 years as stated by Shatrughan Das. She has also did not ruled out the possibility of committing of rape with the victim girl though at the time of examination no such sign was found. This is not out of place to mention here that the medical examination of the victim girl was done after passing of much time from her last meet to Nityanand Mandal. In such situations there was no possibility of finding of sign of rape on the body of the victim girl or presence of spermatozoa. In totality, I find that the evidence of the victim girl being corroborated by evidence of Shatrughan Das, Janak Lal Mandal and the medical officer is fully trustworthy and credible evidence. From perusal of the evidence of Kumar Amar Amar, I find that there are inconsistencies in the investigation but for any mistake or error committed by the investigating officer the prosecution case cannot fail. So far as the delay in lodging FIR is concerned I find that Shatrughan Das has stated that he approached to the police but they did not taken any steps. After recovery of his daughter he again went to the police station but they did not taken any action. Then he approached to the Child Welfare Committee then his complaint was heard by police. I see no reason to disbelieve the statement of Shatrughan Das on this point. The conduct of police as apparent from the manner of investigation of this case made it crystal clear that how seriously our police takes the complaints by ordinary peoples. The other witnesses are of Child Welfare Committee and corroborates that the police did not taken any steps on the request of Shatrughan Das and When the office bearers of Child Welfare Committee assisted him then his case could be lodged.

19. Now I come to the charge under section 376 of Indian Penal Code. The victim girl has specifically stated in her evidence that Nityanand Mandal

had committed rape with her in absence of his wife Mamta Devi. The medical officer also corroborated the possibility of committing rape with her. At the time of alleged occurrence the victim girl was a minor girl. The defence has suggested that maybe a case of consented sex but in case of minor girl consent becomes immaterial. In such situations, I find that the prosecution has successfully proved the charge for the offence punishable under section 376 of Indian Penal Code levelled against the accused Nityanand Mandal. The evidence of PWs 6 and 7 and documents proved by them are related to the circumstances under which the case have been lodged bears no evidential value except showing the manner of working of police in such cases.

20. Now I take the charge for the offence under sections 363, 366A and 367 of Indian Penal Code together because the same are identical offences. The prosecution have been able to prove that the accused persons had kidnapped the victim girl from her lawful guardianship when she was minor and carried her to Sonipat to do the work of made Servant and dancing etc with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. Therefore, the prosecution have been able to prove the charges for the offences punishable under section 366A and 363 of Indian Penal Code against the accused Nityanand Mandal beyond shadow of all reasonable doubts but the prosecution has failed to prove the ingredients of the charge for the offence punishable under section 367 of Indian Penal Code levelled against the accused Nityanand Mandal beyond shadow of all reasonable doubts.

21. Now I take the charge for the offence punishable under section 370 of Indian Penal Code. The prosecution have been able to prove that the accused Nityanand Mandal kidnapped and carried the minor victim girl from her lawful guardianship and taken her to Sonipat for the purpose of taking labour from her and for sexually exploiting and selling her. Therefore, I find that the prosecution have been able to prove the ingredients of charge for the offence punishable under section 370 of Indian Penal Code levelled against the accused Nityanand Mandal beyond shadow of all reasonable doubts.

22. In view of the facts and circumstances of the case discussed above I find that the prosecution has failed to prove the charge for the offence punishable under section 367 of Indian Penal Code levelled against the accused Nityanand Mandal beyond shadow of all reasonable doubts and hold them not guilty for the offence punishable under section 367 of Indian Penal Code. But I find that the prosecution have successfully been able to prove the charges for the offences punishable under section 363, 366A, 370, 376 of Indian Penal Code levelled against the accused Nityanand Mandal beyond shadow of all reasonable doubts and hold the accused Nityanand Mandal guilty for the offences punishable under sections 363, 366A, 370, 376 of Indian Penal Code. In the result the accused Nityanand Mandal is hereby

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convicted under section 363, 366A, 370, 376 of Indian Penal Code. He is already in custody.

(Corrected by me)

(Dictated by me)

(Sd-Md. Ajazuddin)

(Sd-Md. Ajazuddin)

3rd Additional Sessions Judge

3rd Additional Sessions Judge

Continued.

29.02.2016.

Heard the learned lawyer for the convict Nityanand Mandal on the point of sentence. The learned lawyer for the defense argued that the convict is aged about 36 years and this is his first offence, hence, a lenient view may be taken in passing the order of sentence. From perusal of the case record, I find that though there is no charge of previous conviction against the convict yet he has been convicted u/s 363, 366A, 370 and 376 of Indian Penal Code. From the perusal of record, I find that he with full preparation and knowledge, intentionally committed the above offences. Therefore, the question of age or of first offence became immaterial. Keeping in view of the nature, as well as, gravity of the offences, I find that he do not deserve any leniency in imposing sentence. Adequate punishment should be given to him. Hence the convict is hereby sentenced to undergo R/I for ten year and also to pay a fine of Rs 50000/-(fifty thousands rupees) for the offence punishable under section 376 of Indian Penal Code. The convict is further sentenced to undergo R/I for seven years and also to pay a fine of Rs 35000/-(thirty five thousand rupees) for the offence punishable under section 366 A of Indian Penal Code. He is further sentenced to undergo R/I for five years and also to pay a fine of Rs 25000/-(twenty five thousands rupees) for the offence punishable under section 370 of Indian Penal Code. He is further sentenced to undergo R/I for five years and also to pay a fine of Rs 25000/-(twenty five thousands rupees) for the offence punishable under section 363 of Indian Penal Code. However, all the sentences shall run concurrently and the period already under gone him by custody shall be set off against the total period of sentence. In case of default in payment of fine the convict shall undergo an additional period of R/I of one year. The sixty percent of the amount of fine realized from the convict shall be paid to the victim girl for her rehabilitation.

sd

(Md Ajazuddin)

Addl Sessions Judge 3rd

Purnea

sd

(Md Ajazuddin)

Addl Sessions Judge 3rd

Purnea

APPENDIX OF EVIDENCE
INDEX

Oral Evidence

<u>On behalf of Plaintiff/Prosecution</u>	<u>On behalf of Defendants/Defence</u>
PW1 Shatrughan Das	No witness examined
PW2 the victim girl	
PW3 Amrendra Kumar Amar	
PW4 Janak Lal Mandal	
PW5 Dr Punam Prabha	
PW6 Kiran Kumari	
PW7 Jai Krishna Gurung	

Court Witness

CW **no such witness examined**

Documents exhibited in the Court

<u>On behalf of Plaintiff/Prosecution</u>	<u>On behalf of Defendants/Defence</u>
Ext 1 signature of PW1 on CWC report	No document proved
Ext 2 signature of PW1 on written report	
Ext 3 signature of PW2 on CWC statement	
Ext 4 endorsement of written report	
Ext 5 FIR	
Ext 6 medical examination report	
Ext 7 statement of the victim girl	
Ext 8 statement of PW1 at CWC	
Ext 9 signature of Dipak Kumar	
Ext 10 CWC report	
Ext 11 written report	

if, contested defendants are more than one, it will be Ext A1, B1....

Official/Court Exhibit

no such exhibits

(In Criminal Cases)

Material Objects

Not Applicable.

Marks for Identification

List of Misc. Petitions during trial/Appeal

M.P. No.-

General

FIR- 13.09.2012

Charge-sheet- 30.12.2012

Cognizance- 10.01.2013

Commitment-17.01.2013

Charge/Discharge- 13.02.2013

Statement of Accused-29.06.2015

(U/s 313 Cr.P.C.)

Civil

Written Statement -

Framing of Issue

Argument

P.O. (Md Ajazuddin)

vide Letter No.25540-25576/AD(Rules)