2026:JHHC:18562

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 661 of 2005

[*Against the judgment and order of conviction and sentence dated 25.05.2005 and 27.05.2005, respectively passed by learned Sessions Judge, Hazaribag, in S.T. No. 211 of 2002****]***

Subodh Thakur, son of Basant Thakur, resident of Village-Digha, P.S.-Mufassil, District-Hazaribagh

... ... **Appellant**

Versus

1. The State of Jharkhand
2. Victim (Minor girl)

… … **Respondents**

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Binod Kr. Dubey, Advocate
For the State : Mr. Vineet Kumar Vashistha, Spl.P.P.

JUDGMENT

C.A.V. on 12.06.2026 **Pronounced on 24/06/2026**

1. Heard Mr. Binod Kr. Dubey, learned counsel for the appellant and learned Spl.P.P. for the State.

2. The instant criminal appeal is preferred against the judgment and order of conviction and sentence dated 25.05.2005 and 27.05.2005, respectively passed by learned Sessions Judge, Hazaribagh, in S.T. No. 211 of 2002, whereby and whereunder the present appellant has been held guilty for the offence under Sections 363 and 366-A of the I.P.C. and sentenced to undergo R.I. for 5 years for the offence under Section 363 of the I.P.C. and R.I. for 7 years for the offence under Section 366-A of the I.P.C. Both sentences were directed to run concurrently. Other co-accused persons, namely Ijhar Rai and Gulshan Khatoon who were also charge for the offence under Section 109 of the I.P.C. along with Sections 363 and 366-A of the I.P.C. have been acquitted extending the benefit of doubt.

Factual Matrix

3. Factual matrix giving rise to this appeal is that informant's daughter aged about 16 years, a student of I.A. 1st year in Ananda College, Hazaribagh, did not return from college on 05.10.2001 till the evening. The informant made hectic search, but no clue was found then lodged an F.I.R. on 07.10.2001. It is alleged that in the course of search, the informant came to know that the accused Nashim Rai (juvenile in conflict with law) with the connivance of rest accused persons, namely Ijhar Rai, Gulshan Khatoon and Subodh Thakur (present appellant) had kidnapped the informant's daughter with intention to forcefully solemnize marriage with her or to seduce for illicit intercourse with the accused Nashim Rai. The informant also went to the house of accused persons then the parents of accused Nashim Rai consoled him that his daughter will return soon.

On the basis of above information, an F.I.R. being Sadar (M) P.S. Case No. 534 of 2001 dated 09.10.2001 was registered for the offence under Sections 363 and 366-A of the I.P.C. against Nashim Rai, Ijhar Rai and Gulshan Khatoon. In the course of investigation, it was also transpired that the present appellant Subodh Thakur has also taken part in commission of the alleged offence. Hence, after conclusion of investigation, charge-sheet was submitted against above named four accused persons for the aforesaid offences.

4. The main accused Nashim Rai was declared juvenile in accordance with the provision of Juvenile Justice (Care and Protection of Children) Act, 2000. Therefore, his case was separated and sent to

the Juvenile Justice Board. The case of rest of the accused persons was committed to the Court of Sessions where S.T. No. 211 of 2002 was registered. The accused persons denied from the charges levelled against them and claimed to be tried.

5. In course of trial, altogether 9 witnesses were examined by prosecution.

Apart from oral testimony of witnesses following documentary evidence has been adduced.

(i) Exhbit-1-Inquiry report

(ii) Exhibit-2-Written statement

(iii) Exhibit-3-Formal F.I.R.

6. On the other hand, the case of defence is denial from occurrence and false implication.

7. The learned Trial Court after evaluating the evidence available on record arrived at findings that there was no connivance or participation of parents of the main accused, Nashim Rai, in the alleged occurrence. Hence, they were acquitted from the charges. The learned Trial Court further found that at the time of occurrence present appellant was also talking at Daroo bus stand and he also accompanied with the main accused Nashim Rai along with the victim girl and extending threats took the victim girl boarding on a bus to Bagodar and Bishnugarh. Thereafter, the present appellant was given Rs.20/- by the accused Nashim Rai and he returned back from Bagodar and main accused Nashim Rai went with the victim girl to Calcutta. Consequently, both Nashim Rai and the victim girl were apprehended

by police from Petarwar. Accordingly, the appellant was held guilty for the offence under Sections 363 and 366-A of the I.P.C. which has been assailed in this appeal.

Submissions on behalf of appellant: -

8. Learned counsel for the appellant assailing the impugned judgment has contended that the entire evidence available on record against the appellant categorically shows that he might have been enticed the victim girl along with the main accused Nashim Rai and proceeded along with them towards Bishnugarh and Bagodar, but admittedly the present appellant left them at Bagodar and proceeded to his own house. The victim girl herself has not stated anything else against the appellant that he was inducing the victim girl for any sexual/illicit relation or performing marriage with her rather the same allegation has been levelled only against main accused, Nashim Rai, who was found juvenile at the time of occurrence. Therefore, conviction of the appellant for the offence under Section 366-A of the I.P.C. is absolutely illegal and beyond the weight of evidence available on record. It is further submitted that so far as the charge for offence under Section 363 of the I.P.C. against the appellant is concerned, at the initial stage of the occurrence of taking away the victim girl from the custody of her parents has been proved by the prosecution including the victim girl. The appellant was also aged about 22 years at the time of occurrence and has got no sufficient maturity. He has also remained in custody for one year in connection with this case during trial and post conviction. The appellant has no criminal background and after

conviction in this case also he has maintained good conduct and has not involved in any other criminal activities. Therefore, he has been sufficiently punished for his guilt. The reformatory theory of punishment in the peculiar facts and circumstances of this case, must prevail over the theory of deterrence as no useful purpose will be solved by sending back the appellant to jail custody for sustaining the remaining period of sentence awarded to him by learned Trial Court. Therefore, sentence passed against the appellant for the offence under Section 363 of the I.P.C. may be reduced to the extent of imprisonment already undergone and this appeal may be allowed.

Submissions on behalf of State: -

9. On the other hand, learned Spl.P.P. for the State has defended the impugned judgment on merits, but fairly admits that ingredients of offence under Section 366-A of the I.P.C. is not constituted against the present appellant rather there are sufficient evidence constituting the offence under Section 363 of the I.P.C. against the present appellant. On the date of occurrence, the appellant was elder than the main accused Nashim Rai and he prevailed over the wishes of the victim girl who was simply 16 years old. Although, no sexual assault alleged to have been committed against the victim girl either by the main accused or by this appellant. Therefore, conviction and sentence of the appellant for the offence under Section 363 of the I.P.C. is liable to be upheld and confirmed and this appeal being devoid of merits is fit to be dismissed.

Analysis, discussions and reasons:-

10. I have gone through the record of the case in the light of points

of argument raised on behalf of both side.

11. It appears that the victim girl has been examined as **P.W.-4** whose evidence reigns supreme in this case. According to evidence of victim on 05.10.2001, while she was proceeding to her college and reached near Daroo chowk then Nashim Rai and Subodh Thakur (present appellant) threatened her to kill her parents otherwise she would accompany with them. Both the accused persons got boarded her on a bus and passing through Ichak and Bishnugarh, they brought her to Bagodar in the evening. Thereafter, Nashim Rai gave Rs.20/- to Subodh Thakur and told him to go back to his home. Subsequently, she was brought to Calcutta, where he was insisting upon forcibly solemnize of marriage with her. Thereafter, she was brought to Barkakana and kept there by Nashim Rai and ultimately to Petarwar, where she used a telephone booth and informed her maternal uncle about the occurrence. Police force was also moving there and Nashim Rai along with the victim girl was apprehended. The victim girl was medically examined thereafter handed over to her parents.

In her cross-examination, she admits that at Daroo chowk there is a saloon of Subodh Thakur. She also states that Subodh Thakur is a simple person but so far threatening given by the present appellant in taking away the victim girl has been reiterated by her in her cross-examination also.

P.W.-1 Indrajit Kumar, **P.W.-2** Harihar Prasad and **P.W.-3** Karoo Ram have been declared hostile by the prosecution.

P.W.-5 Dr. R.S. Vandana has medically examined the victim girl

and found no internal or external injury or any definite opinion about commission of rape rather on the basis of X-ray findings the age of victim has been assessed as 16 years.

P.W.-6 Badri Narayan Deo is the father of the victim-cum-informant who has consistently supported the prosecution story and the contents of his *fardbeyan.*

P.W.-7 Vijay Yadav has also stated that on 05.10.2001 at about 07:00 A.M., while victim girl was going to her school, he saw her with Nashim Rai and Subodh Thakur and both took her boarding on a bus.

P.W.-8 Ram Chandra Prasad, A.S.I. is first I.O. of the case who has proved the formal F.I.R. as **Exhibit-3.** On 12.10.2001, he received telephonic information about presence of victim girl along with accused Nashim Rai at Peterwar then both were apprehended and informant was communicated. The victim girl was sent for medical examination.

P.W.-9 Shailendra Kumar Singh, S.I. is the second I.O. of this case who after completion of investigation has submitted charge-sheet against the accused persons.

12. From the aforesaid discussion of ocular testimony of witnesses, it is crystal clear that the prosecution has been able to prove the taking of the victim girl with assistance of the present appellant, but he dropped the main accused and the victim girl in the way and proceeded to his home, therefore, the ingredients of offence under Section 363 of the I.P.C. is fortified against the present appellant.

13. So far the conviction of the appellant for the offence under

Section 366-A of the I.P.C. is concerned, the provision runs as follow:-

> *"**366-A. Procuration of minor girl**—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act 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 shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."*

14. To prove charge under Section 366-A of the I.P.C. the following ingredients must be established:-

(a) One person induced a minor girl below the age of 18 years to go from one place to another, or

(b) To do any act which he knows that the victim will be or likely to be seduced or subjected to illicit intercourse by another person.

15. From the bare perusal of above provision and the ingredients of offence under Section 366-A of the I.P.C. in the background of evidence available on record, it is crystal clear that the present appellant was not involved in extending any help with the intention that the victim girl is likely to be forced or seduced to illicit intercourse with the main accused. The medical examination report of the victim also does not establish the commission of rape with the victim girl. Therefore, conviction and sentence of the appellant for the offence under Section 366-A of the I.P.C. appears to be not justified under law and based upon beyond the weight of evidence available on record which is hereby set aside, but the conviction of the appellant for the

offence under Section 363 of the I.P.C. is upheld.

16. So far sentence for the offence under Section 363 of the I.P.C. is concerned, it appears that the appellant has already remained in custody for one year during investigation/trial of the case. The case is of the year 2001, more than two decades have been elapsed and the appellant has maintained mainstream of life without involving himself any other criminal activities. Therefore, the imprisonment already undergone by the appellant appears to be sufficient punishment in this case. Accordingly, the sentence of 5 years R.I. imposed for the offence under Section 363 of the I.P.C. against the appellant is hereby set aside and modified to the extent of imprisonment already undergone by the appellant.

17. Therefore, conviction and sentence of the appellant is altered and modified to the extent mentioned above and this appeal is **partly allowed**.

18. Pending I.A(s), if any, stands disposed of.

19. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 24/06/2026
Arpit/ ***N. A. F. R.***
Uploaded on 25/06/2026