

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Appeal (SJ) No.6 of 2015

Arising Out of PS.Case No. -208 Year- 2005 Thana -KAHALGAON District- BHAGALPUR

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PRAKASH MAHALDAR SON OF RAJENDRA MAHALDAR RESIDENT OF  
VILLAGE-KURMA,P.S-KHALGAON,DISTRICT-BHAGALPUR

.... .... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... .... RESPONDENT/S

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### Appearance:

For the Appellant/s : Mr. Praveen Kumar, Adv.

For the State : Mr. Z. Hoda, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

ORAL JUDGMENT

**Date: 30-11-2017**

Appellant, Prakash Mahaldar has been found guilty for an offence punishable under Section 366 of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to rupees three thousand, under Section 379 of the IPC and sentence to undergo R.I. for two years as well as fine of rupees one thousand, in default of non-payment of fine to undergo S.I. for six months under both heads conjointly with a further direction to run the sentences concurrently vide judgment of conviction dated 10.09.2014 and order of sentence dated 12.09.2014 passed by Sixth Additional Sessions Judge, Bhagalpur in Sessions Trial No.1238/2006.

**2.** PW.6, Gholu Singh filed Complaint Petition No.111/2005 on 19.01.2015 disclosing therein that his marriage was solemnized with Sabita Devi, daughter of Baidnath Mahaldar of village-Kurma, P.S.-Kahalgaon, District-Bhagalpur about one and half years ago and were duly acknowledged as spouse. It has further been disclosed that in order to earn his livelihood, he had



gone to Delhi leaving behind her who, on one pretext or other left his place and gone to her Naihar on 10.01.2005. On 12.01.2005 his sala Nago Mahaldar (PW.4) informed that Sabita Devi had left her Maika along with cash, ornaments and fled away along with Prakash Mahaldar, co-villager. On 15.01.2015 he returned from Delhi, came to his Sasural and then to the place of Prakash Mahaldar who on query had said that he has married with his wife and further, shown pistol with a threatening of dire consequence in case, any kind of protest is being made at his end as well as also took out rupees 850/-.

**3.** The learned court below had sent the aforesaid complaint petition to the local police for registration and investigation in accordance with Section 156(3) of the Cr.P.C. on the basis of which, Kahalgaon (Rasalpur) P.S. Case No.208/2005 was registered whereupon Investigation was taken up and after concluding the same, charge sheet was submitted facilitating the trial which ultimately concluded in a manner, subject matter of instant appeal.

**4.** Defence case as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial.

**5.** In order to substantiate its case, prosecution had examined altogether six PWs and those are PW.1-Kartik Mandal, PW.2-Nepali, PW.3-Dukhan Mahaldar, PW.4-Nago Mahaldar, PW.5-Sabita Devi (victim) and PW.6-Gholu Singh, informant/husband of PW.5. As stated above, defence had not



adduced oral as well as documentary evidence.

6. From perusal of the judgment impugned, it is evident that appellant has been found guilty for an offence punishable under Section 366 of the IPC as well as 379 of the IPC observing that appellant, Prakash Mahaldar had kidnapped victim Sabita Devi in order to compel her to marry as well as depriving her out from the ornaments, cash. During cross-examination of PW.5 the victim herself it is apparent that she on her own had gone to the place of appellant as she had stated that “PRAKASH KE YAHA MAI APNE MAN SE GAYE THE” and that being so, being major no offence is made out irrespective of status of the victim being married. So far snatching of ornaments as well as cash from the informant is concerned, there happens to be in conspiracy amongst the PWs, whereupon, the same is also not found duly proved.

7. As such, considering the evidence of victim who happens to be major, the evidence of other witnesses have become worthless. Consequent thereupon, the finding recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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| AFR/NAFR          | A.F.R.     |
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