

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.32 of 2018**

Arising Out of PS. Case No.-134 Year-2015 Thana- KUMAR KHAND District- Madhepura

Md. Babul @ Bablu @ Abdul Rahman @ Md.Bablu @ Abdul Raman, S/o  
Md. Idrish, Resident of Village-Yaduapatti P.S. Kumarkhand, Dist-  
Madhepura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                |
|----------------------|---|----------------------------------------------------------------|
| For the Appellant/s  | : | Mr.Sharda Nand Mishra, Adv.<br>Mr. Dhananjay Kumar Gupta, Adv. |
| For the Respondent/s | : | Mr. Abhay Kumar, APP                                           |

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

**Date : 23-07-2019**

1. Md. Babul @ Bablu @ Abdul Rahman @ Md.Bablu @ Abdul Raman has been found guilty for an offence punishable under Section 366 of the IPC and sentenced to undergo R.I. for five years vide judgment of conviction dated 30.11.2017 and order of sentence dated 08.12.2017 passed by Additional Sessions Judge, FTC,Ind, Madhepura in Sessions Trial No.28/2016 arising out of Kumarkhand P.S. Case No.134/2015.

2. Sukul Das (PW.4) filed written report on 12.10.2015 disclosing therein that his wife (name withheld) PW.5 aged about 27 years along with his son Vivek Kumar aged about seven years and Rupesh Kumar aged about four years are traceless since 28.09.2015. He has been informed while staying at Punjab for his livelihood whereupon, he returned back on 05.10.2015 and then came to know about the occurrence as disclosed by his parents. It has also been disclosed by his father that on 28.09.2015 at about 10.00 AM his wife



had gone on the pretext of getting herself examined by a doctor having Rs.2900/- after selling of a bicycle. He made hectic search but in vain. He has further shown suspicion against Chandra Kishore Sah, Md. Babul and Jawahar Das as, she was on visiting term.

**3.** After registration of Kumarkhand P.S. Case No.134/2015 followed with investigation as well as submission of charge sheet, facilitating the trial which concluded in a manner, subject matter of instant appeal.

**4.** Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. However, nothing has been adduced in defence.

**5.** In order to substantiate its case, prosecution has examined altogether 8 PWs who are PW.1-Pankaj Rajak, PW.2-Bise Tatba 2 Bisi Das, PW.3-Guddu Tatba, PW.4-Sukul Das (informant), PW.5-Victim, PW.6-Kamal Das, PW.7-Dr. Harinandan Prasad, PW.8-Dr. Bipin Kumar. Side by side had also exhibited Ext.1-Signature of informant over written report, Ext.2-Signature of victim over statement recorded under Section 164 of the Cr.P.C., Ext.3-Medical Report issued by PW.7 and Ext.4-Signature of PW.8 over medical report. As stated above, nothing has been adduced on behalf of defence.

**6.** Heard, learned counsel for the appellant as well as learned APP. Gone through the record. From the record it transpires that PW.1, PW.2, PW.3 have not supported the case of the prosecution and



so they were declared hostile. PW.4 is the informant, PW.5 is the victim and PW.6 is the father-in-law of the victim/father of the PW.4. PW.6 during course of evidence has not disclosed that he had seen the accused persons including the appellant engaged in enticing away the victim rather he had stated that his daughter-in-law was taken away and disclosed name of Md. Babul as one of the kidnapper. When victim came, she had disclosed the names of her kidnapper. Identified the accused. During cross-examination he was confronted with his previous statement that on the alleged date of occurrence his daughter-in-law had left the place on the pretext of visiting a doctor having money along with her. He had further stated at para-3 of his cross-examination that victim had not disclosed to him anything regarding the occurrence.

7. PW.4 is the informant who has deposed that his father had informed on mobile while he was staying at Punjab that his wife (victim) had gone to visit doctor's place after taking sale proceed of a bicycle and since thereafter, she had not returned. Later on he came to know that Chandra Kishore Sah, Md. Babul and Jawahar Das enticed her away and on that very pretext, he had filed written report. Identified the accused. He has further stated that he came to know from his wife with regard to the occurrence. During cross-examination he has stated that he has not seen the occurrence. He has further stated that his wife has filed a case of maintenance against him which is going on.

8. PW.5 is the alleged victim. She has stated that on the alleged date and time of occurrence while she was at her house Chandra



Kishore Sah, Md. Babul and Jawahar Das came and they forcible took her away. They have taken away to an unknown place where they confined her for one or two months and during midst thereof, all of them committed rape. Her husband had instituted this case. Then, her father took her to police who got her examined under Section 164 Cr.P.C. before a Magistrate (identified the signature). Identified the accused. During course of cross-examination she has stated that whatever she had faced during course of occurrence, she had deposed. In para-4 she had stated that accused persons took away her two sons along with her. They have not raised alarm as, accused persons have gagged their mouth. Then has denied the suggestion that on account of strain relation with her husband, as a result of which criminal cases are going on amongst them, this false case has been instituted in order to protect herself against an allegation. She has denied the suggestion that as they have borrowed Rs.70,000/-, on account thereof, this false case has been instituted.

9. From the evidence available on the record, it is evident that the earliest prosecution version happens to be with regard to going of victim along with her two sons on the pretext of visiting to the clinic of doctor after having Rs.2900/- the sale proceed of a bicycle which, PW.4 the informant during his examination-in-chief re-affirmed. Furthermore, from the evidence of PW.6, it is evident that he had not corroborated the evidence of PW.5, the victim who had stated that the appellant along with two others came at her house and then forcibly



taken her away along with her two sons, rather PW.6 is silent over the same. That means to say departure of PW.5 in a manner as suggested by PW.4 came under suspicion and in the aforesaid background, having in company of accused for such long period being a major, having two children without disclosing her location, effort to come out from clutches of the accused cast a doubt over her conduct and consequent thereupon, finding recorded by the learned lower court would not survive. Hence, the same is set aside. Appeal is allowed. Appellant is under custody, hence is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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| AFR/NAFR          | AFR        |
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