

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.232 of 2022

Arising Out of PS. Case No.-812 Year-2016 Thana- SASARAM NAGAR District- Rohtas

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Ravindra Kumar Singh Son of Jagdish Singh Resident of Mohalla - Santoshi
Maa Path, Road No. 11E Ward No. 5 P.S. Sasaram, District - Rohtas.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Vishal Kumar Paswan @ Gautam @ Vishal Kumar Son of Jai Ram
Paswan @ Dhana Paswan Resident of Village - Bharadih
(Bhawanadihari), P.O. - Sisirita Via Nokha, P.S. - Nokha, District -
Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nand Kishore Prasad Sinha, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 13-10-2022

In the present criminal appeal filed under Section 372
of the Criminal Procedure Code, the appellant has put to
challenge judgment and order dated 25.01.2022 passed by
learned Additional Sessions Judge 1st Rohtas at Sasaram in
Sessions Trial No. 465 of 2017 CIS No. 465 of 2017, arising out
of Sasaram (Model) P.S. Case No. 812 of 2016, whereby the
respondent No. 2 has been acquitted of the charge of offence
punishable under Section 366A of the Indian Penal Code.



2. We have heard Mr. Nand Kishore Prasad Sinha, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

3. The appellant (PW-4) is the father of the victim (PW-5) and is the informant of the said Sasaram (Model) P.S. Case No. 812 of 2016.

4. It is the prosecution's case as disclosed in the written information given by the informant (PW-4) on 16.07.2019 to the Officer In-charge of Model Police Station Sararam that the victim, aged about 16 years and 6 months was staying with her mother, brother and sister in the house of her maternal grandmother and was studying there. She had gone with her mother to attend a marriage ceremony in a neighbouring house on 13.07.2016. It was, however, noticed that since 5:00 pm. of 13.07.2016, the victim was missing. The respondent No. 2 happened to be the driver of a vehicle owned by the maternal uncle of the victim. The informant suspected that respondent No. 2 might have enticed her and taken her away with an intention to solemnize marriage with her.

5. It transpires from the deposition of the Investigating Officer (PW-6) as mentioned in the impugned judgment and order that on a secret information he recovered



the victim from a place called 'Khargar More'. The Investigating Officer disclosed in his evidence that he had not recorded statement of the victim under Section 161 of the Criminal Procedure Code and her statement was recorded under Section 164 of the Criminal Procedure Code. The Investigating Officer further deposed that the victim had not made any allegation against respondent No. 2 in her statement recorded under Section 164 of the Criminal Procedure Code. The statement of the victim under Section 164 of the Criminal Procedure Code was recorded on 21.03.2017 before learned Judicial Magistrate First Class, wherein she disclosed that she had gone with respondent No. 2 at her sweet will and was living with him. She had returned to Sasaram a day ago and wanted to go with her grandfather. The police upon completion of investigation submitted charge-sheet against respondent No. on 27.04.2017. After cognizance having been taken of the offence, the case was committed to the Court of learned Sessions Judge, Rohtas at Sasaram. Charge came to be framed under Section 366A of the Indian Penal Code. As respondent No. 2 pleaded not guilty, he was put on trial.

6. During the course of trial the prosecution examined six witnesses including the victim (PW-5), the informant (PW-



4), the Investigating Officer (PW-6), maternal uncle of the victim (PW-1), mother of the victim (PW-3) and sister of PW-3 as PW-2.

7. The victim (PW-5) in her testimony at the trial, for the first time, deposed that respondent No. 2 had kidnapped her, with the use of force in a car. She further deposed that she had become unconscious and when regained consciousness she had found someone speaking to administer a sedative to render her unconscious. When she regained consciousness second time, she found her mouth and legs tied with clothes. Further, she was being assaulted by the respondent No. 2 and his accomplice(s). She further deposed that respondent No. 2 was planning to sell her. She also deposed that she was forced and threatened by respondent No. 2 and his advocate to make incorrect statement before the Magistrate under Section 164 of the Cr.P.C. that she had gone with him (respondent No. 2) voluntarily. Furthermore, she deposed that respondent No. 2 had told her (the victim) that criminal case lodged by her family members saved her and that he had kidnapped her to sell her. One day, father of respondent No. 2 asked him on phone to come back with the victim there being lot of pressure mounted by the police. Respondent No. 2 was again administered sedatives because of which she became



unconscious and in that condition respondent No. 2 proceeded with her in a train. The train stopped at Bhabhua Railway Station. From Bhabhua Railway Station, respondent No. 2 brought her at the house of her relative. Father of respondent No. 2 (his advocate) and an old man brought her from Bhabhua and the advocate of respondent No. 2 brought her inside the Police Station at Sasaram. The police officials made certain inquiries from her and thereafter her statement was recorded. On account of threats issued by respondent No. 2, his advocate and others, she had made an incorrect statement before the Magistrate under Section 164 of the Criminal Procedure Code that she had gone with the respondent No. 2 out of her own violation.

8. Learned trial court upon scrutinizing the evidence adduced at the trial has disbelieved the evidence of PW-5 which she gave for the first time against respondent No. 2, at the trial, contrary to her statement recorded under Section 164 of the Cr.P.C.

9. We have perused the impugned judgment and order of the trial court and have given our thoughtful considerations to the submissions made on behalf of the appellant. It is not the case of the appellant that evidences of the witnesses have been



wrongly recorded by the trial court in its impugned judgment and order. It is easily discernible that there are certain glaring contradictions in the evidence of the witnesses. The Investigating Officer in his deposition has stated that based on secret information he had recovered the victim from a place at 'Khargar More'. The victim in her deposition, on the other hand, has stated at the trial that the advocate of respondent No. 2 had brought her to the police station, whereafter certain inquiries were made by the police. Subsequently, she was brought to the Court where her statement was recorded under Section 164 of the Criminal Procedure Code.

10. Further, the victim was found on or before 21.03.2017. The charge-sheet was submitted by the police one month thereafter on 27.04.2017. The statement of the victim under Section 164 of the Criminal Procedure Code was recorded on 21.03.2017, in which she had admitted that she had gone with respondent No. 2 voluntarily. From the date when the victim was found on 21.03.2017 till submission of charge-sheet on 27.04.2017 no person came forward to tell the police or the Court about the nature of occurrence which had allegedly taken place, as disclosed by the victim in her deposition.

11. Furthermore, the victim deposed at the trial that



she was forcibly kidnapped by respondent No. 2 and was maltreated by him. It is pertinent to note that none of the prosecution witnesses including the victim's father (PW-4) and victim's mother (PW-3) have deposed that the victim had ever disclosed to them about the forcible kidnapping of the victim by the respondent No. 2.

12. In such view of the matter, the deposition of PW-5 at the trial becomes doubtful and loses its credibility.

13. Further there is completely no evidence adduced at the trial to establish that the victim was a minor as on the date of occurrence which is an essential ingredient to attract an offence punishable under 366A of the Indian Penal Code.

14. In our considered opinion, thus, the view which has been taken by the trial court, acquitting respondent No. 2 of the charge of commission of offence punishable under Section 366A of the Indian Penal Code, cannot be said to be not a possible view based on appreciation of evidence on record. The finding of acquittal recorded by the trial court does not suffer from any legal infirmity requiring this Court's interference in exercise of the appellate jurisdiction under Section 372 of the Criminal Procedure Code.

15. We do not find any merit in this appeal. This



appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree
(Khatim Reza, J):-

(Khatim Reza, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	22.09.2022
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