

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.696 of 2013

Arising Out of PS. Case No.-138 Year-2012 Thana- BAISI District- Purnia

Sabir Son Of Hairul, Resident Of Village- Chimni Bazar, P.S.- Sadar, District-
Purnea

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Amit Kumar Anand
For the Respondent/s	:	Mr.Z.Hoda App

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Amit Kumar Anand, learned counsel for the appellant, and Z. Hoda, learned APP for the respondent-State.

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of conviction dated 02.09.2013 and order of sentence dated 05.09.2013 passed in Sessions Trial No. 891 of 2012/T.R. No. 05 of 2012, arising out of Baisi P.S. Case No. 138 of 2012 (G.R. No. 2087 of 2012), by learned 1st Additional Sessions Judge, Purnea by which the appellant/convict has been convicted for the offence under Section 363 of I.P.C. to undergo rigorous imprisonment for five years and 5000/- fine and in default of payment of fine, further imprisonment for six months.

3. The brief facts leading to the filing of the present



appeal are that as per *Fardbeyan* of the informant Anita Kumari, aged 13 years, registered on 12.06.2012 at 6.40 p.m. by Sub Inspector Anusham Kumar of Bir Singh's Gher village Timaliya Kana Bavti district Purnia, Police Station Bagli that, at around 3 p.m., informant was alone at home. Thereafter, when Sabir, son of Hairul, a resident of Chimni Bazar, City Police Station Sadar, District Purnia, came to her house. Upon his arrival, Sabir forcibly held her hand and tried to take her away, claiming he would marry her. The informant began shouting, drawing the attention of nearby people, who gathered and restrained him. When question raised by the villagers, Sabir stated that about 15 days earlier, a boy named Quamrul from Chimni Bazar had similarly taken a girl named Saista from the same village, married her, and kept her at his home. Quamrul had allegedly given the informant's phone number to Sabir, leading to their recent phone conversations. On the pretext of marriage, Sabir came to the village and attempted to forcibly take the informant with him. The informant further stated in her *Fardbeyan* that although Saista's family hadn't reported her leaving, the villagers were aware that she had married Quamrul and was staying with him. Quamrul who used to work at the school in the same village, had known Saista since then.



4. On the basis of the *Fardbeyan* of the informant, Baisi P.S. Case No. 138 of 2012 dated 12.06.2012 was lodged under section 366A IPC. The investigation was assigned to Krishna Kant Rai, who, upon completion, filed charge-sheet no. 119/12 on 29.06.2012 against Sabir under Section 366A of the IPC. On 23.07.2013, the Chief Judicial Magistrate took cognizance of the case, and by order dated 25.07.2012, the matter was transferred to the Sessions Judge's court for trial commencement.

5. During the course of the trial, the prosecution examined altogether 7 (Seven) witnesses, namely, PW-1 Jethu Lal Das, PW-2 Mohar Singh, PW-3 Mohd. Alam, PW-4 Sikandar, PW-5 Anita Kumari (informant), PW-6 Krishna Kant Rai (IO), and PW-7 Ajay Kumar (1st class Judicial Magistrate) have been examined.

6. Learned counsel for the appellant, Mr. Amit Kumar Anand, at the outset, submits that PW-1, PW-2, PW-3, and PW-4 have turned hostile. He further stated that PW-5 (Informant), who is the primary eyewitness to the incident, has also been declared hostile by the prosecution. The learned counsel further stated that PW-5 (Informant) testified in her deposition that the appellant was not attempting to forcibly abduct her, but rather, an intimate conversation was taking place between them. He further



submitted that the trial Court neglected to consider PW-5's (Informant's) evidence, in which she claimed she had given a statement under Section 164 of the Cr.P.C. under police pressure and direction, which did not reflect the actual truth. Counsel further submitted that neither Quamrul nor Saista were examined and no independent witness has supported the prosecution's case; instead, all were declared hostile. Counsel further submitted that none of the victim's family members were examined by the prosecution. He further submitted that the informant's statement under Section 164 of the Cr.P.C. cannot serve as a basis for conviction and on this basis the learned counsel submits that the judgment and order of the trial court contradict the weight of the evidence on record and, therefore, deserves to be set aside.

7. On the other hand, learned APP has strongly controverted the contention of defense counsel but learned APP has conceded that the order of conviction passed by the learned Trial Court is solely based upon the statement of the victim under Section 164 of the Cr.P.C. without any corroborative and substantive evidence.

8. Considering all the facts and circumstances of the case, it appears that the victim herself has stated in her deposition that while she was going out with her cousin, she fell near the



accused and a verbal altercation ensued. Thereafter, she went to file a police case against the appellant, and thereafter, the police officials took the informant's signature and thumb impression and the officials did not tell her what was written in the *Fardbeyan* which had already been stated by the informant herself in her deposition. The conviction is solely based upon the Statement of the victim u/s 164 of the Cr.P.C. and the same has not been corroborated with any evidence. Further, it is evident that the PW-1 to PW-5 has been declared hostile.

9. The **Hon'ble Apex Court**, in the case of **Ram Kishan Singh vs. Harmit Kaur and another (1972) 3 SCC 280** has laid down that, although a statement recorded under Section 164 of the Code of Criminal Procedure might be used to support or refute a witness's testimony, it is not considered substantial evidence.

10. The **Hon'ble Apex Court**, in the case of **Baij Nath Sah vs. State of Bihar (2010) 6 SCC 736** also held that the prosecutrix's statement recorded under Section 164 Cr.P.C. is not substantial evidence and cannot be used to condemn the appellant; it may only be used to support or refute the witness's testimony presented in court.

11. This Court is of the view that the prosecution has not



proved its case beyond all reasonable doubt and in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. However, the Trial court, having misled itself into specious reasoning that there is corroboration between the statements of the victim recorded under Section 164 Cr.P.C, and the Trial Court has proceeded to render a conviction against the appellant, which, cannot be endorsed, in view of the law laid down in various decisions of the Hon’ble Apex Court.

12. In view of the above, the judgment of conviction dated 02.09.2013 and order of sentence dated 05.09.2013 passed in Sessions Trial No. 891 of 2012/T.R. No. 05 of 2012, arising out of Baisi P.S. Case No. 138 of 2012 (G.R. No. 2087 of 2012), by learned 1st Additional Sessions Judge, Purnea is set aside and the appellant is acquitted of all the charges. As the appellant is on bail, he is discharged from the liability of bail bond.

13. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

sunnykr/-

AFR/NAFR	
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