

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3683 of 2022

Arising Out of PS. Case No.-1 Year-2020 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Lalu Kumar @ Lalo Kumar Son of Badiyal Rai R/V- Dhobgiddha, P.S-
Rupauli, Dist- Purnea

... .. Appellant/s

Versus

1. The State of Bihar
2. Mausam Kumari D/O- Angad Rai R/O Vill.- Dhobgiddha, P.S.- Rupauli,
Distt.- Purnea

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhola Prasad, Advocate
: Mr. Indrajeet Kumar, Advocate
For the Respondent/s : Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 07-08-2024

This appeal has been preferred by the
appellant/convict under Section 374(2) of the Code of
Criminal Procedure (hereinafter referred to as 'the
Code') challenging the judgment of conviction dated
13.10.2022 and order of sentence dated 14.10.2022
passed by learned Additional District and Sessions Judge



7th -cum-Special Judge (POCSO), Purnea in C.A. (POCSO) Case No. 01 of 2020 (arising out of Complaint Case No. 01 of 2020), whereby the concerned Trial Court has convicted the appellant/convict for the offences punishable under Section 366 of the IPC and he has been sentenced to undergo rigorous imprisonment for three years and fine of Rs. 5,000/- and in default of payment of fine, further undergo simple imprisonment for three months.

2. As per the case of complainant/victim/P.W. 1, it appears that on 31.12.2019 at about 9:30 PM appellant/convict alongwith other co-accused persons came to the courtyard of the complainant and called her, who by that time was sleeping with her mother. She denied to accompany them and after said denial the appellant dragged her to his house as to solemnize marriage with her. One Mukesh Rai cousin of appellant/convict informed mother of victim/P.W. 2 on her mobile phone regarding alleged occurrence,



whereafter she came to the house of appellant, which was just after 4-5 houses and protested the proposed marriage. P.W. 1/victim, thereafter, brought to her house by P.W. 2/mother.

3. To substantiate its case, the prosecution has examined altogether five witnesses. They are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Victim
P.W. 2	Lalita Devi (mother of victim)
P.W. 3	Ravindra Rai (maternal uncle, <i>mama</i>)
P.W. 4	Suman Kumar (elder brother of victim)
P.W. 5	Saurabh Kumar (younger brother of victim)

4. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellant/convict under Section 313 of the Code, where he completely denied his involvement by denying the incriminating evidences and circumstances surfaced



during the trial and stated that he was implicated with this case falsely and claimed his innocence.

5. Three defence witnesses were also examined by appellant/convict during the trial in defence but no document was exhibited in support. Defence witnesses are:-

Defence Witnesses No(s).	Names
D.W. 1	Kumod Rai
D.W. 2	Sita Ram Rai
D.W. 3	Sikandra Rai

6. Taking note of the evidence and circumstances as surfaced during the trial and arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under Section 366 of IPC and sentenced him to under go for rigorous imprisonment for three years alongwith fine of Rs. 5,000/-.

7. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the



appellant/convict has preferred the present appeal.

8. Hence, the present appeal.

Argument on behalf of the appellant/convict:

9. Learned counsel appearing on behalf of appellant/convict submitted that present prosecution was not initiated on the basis of police report, rather same was based upon complaint case, which was lodged with the delay of 9 days as afterthought, in the background of land dispute. It is submitted that the deposition of prosecution witnesses are full of contradictions, negating any such occurrence. It is also pointed out that during the trial complainant failed to establish that she was kidnapped, as to seduced or forced to solemnize her marriage with "any person" against her will, which is an essential ingredient as to bring the offence within the meaning of Section 366 of the IPC. In support of his submissions learned counsel relied upon the legal report of Hon'ble Supreme Court as held in the matter of **Kavita Chandrakant Lakhani Vs. State of**



Maharashtra and Another, reported in [(2018) 6 SCC 664].

10. While concluding the argument it is also pointed out that in view of such evidences and legal propositions present judgment of conviction as recorded by learned trial court is fit to be quashed and set aside.

Argument on behalf of State:

11. Learned APP, while opposing the appeal submitted that victim/P.W. 1 deposed specifically as to kidnap her from her house by appellant as to solemnize marriage with her against her will and as such there is no occasion to interfere with the finding of learned trial court, while recording the judgment of conviction which is under appeal.

12. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.



13. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

14. From the perusal of records it appears that most important witness of the occurrence is victim/P.W. 1, herself. It appears from her deposition, while she was sleeping with her mother on 31.12.2019 co-accused Rubi Devi asked her to accompany and later on she was forcefully taken by this appellant/convict to his house which was situated after 4-5 houses in between. It appears from her deposition that one Badiyal Rai, who is none but the father of appellant/convict and one Jano Rai, asked appellant to put vermilion on her forehead. It nowhere appears from her deposition that on said instigation any act furtherance thereof was committed by this appellant, which suggest that he step out from solemnization of forcefull marriage with victim. It also appears from her deposition that the occurrence was



witnessed by her younger brother/P.W. 5 and her maternal uncle/P.W. 3. From her testimony it also appears that she was well acquainted with appellant/convict prior to this occurrence and they usually on different occasions visited house of each others. It was categorically stated by victim that she did not saw any preparation in courtyard of appellant, which may suggest that there was any preparation for solemnization of marriage. It was stated that she remained in courtyard of appellant on the night of the occurrence for about one hour.

15. P.W. 2 Lalita Devi, mother of victim stated that she was informed regarding occurrence by one Mukesh through her mobile phone. She failed to depose about the details of said mobile no. through which she was informed. It appears from her cross-examination that she came to know about the occurrence from her daughter after returning home, casting serious doubt regarding the manner of occurrence as deposed by her.



It appears from her deposition that appellant is her cousin brother and this marriage was not ethically possible.

16. P.W. 3 Ravindra Rai maternal uncle (mama) of victim deposed that he visited place of occurrence after two hours of the visit of P.W. 2/mother of victim. He stated to brought victim and P.W. 2 with him from the courtyard of appellant.

17. From the deposition of P.W. 4 Suman Kumar (elder brother of the victim), who at the time of occurrence was present in Gujrat. He appears to be a hearsay witness and his entire deposition is based upon hearsay input as he received over phone by P.W. 2/mother regarding crime in question.

18. P.W. 5, Saurabh Kumar (younger brother of the victim), who stated to sleep with victim/P.W. 1 on the night of the occurrence, contrary to the statement of P.W. 1/victim that she was sleeping with her mother/P.W. 2.



19. From the aforesaid evidence, it can be gathered safely that P.W. 2, P.W. 3 & P.W. 4 are not eye-witness of the real occurrence. *Albeit*, they projected themselves to be an eye-witness of the occurrence. From the deposition of P.W. 1/victim and other prosecution witnesses, it appears that alleged kidnapping of P.W. 1 was not taken place with an intention to solemnize her marriage with "any person".

20. It would be apposite to reproduce Section 366 of the IPC, for better understanding of position of law, which reads as under:-

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a



term which may extend to ten years, and shall also be liable to fine; 1 [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

21. It would be apposite to reproduce the para nos. 16 and 17 of the **Kavita Chandrakant Lakhani Case (supra)**, in aforesaid context which reads as under:-

16. In order to constitute the offence of "abduction", a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this section. The volition, the intention and the conduct of the accused determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the



accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse.

17. Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person



or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the court cannot hold the accused guilty and punish him under Section 366 IPC.

22. Besides above, it appears that complaint was lodged with an unexplained delay of 10 days. The statement of appellant/convict under Section 313 of Cr.P.C. also appears to be recorded by learned trial court in very cryptic and mechanical manner without putting incriminating evidences as surfaced during the trial.

23. In view of aforesaid factual discussion and established legal ratio, it can be said safely that prosecution failed to answer material questions as to establish guilt of appellant/convict within the meaning of Section 366 of the IPC.

24. Accordingly, the appeal stands allowed.

25. The impugned judgment of conviction dated 13.10.2022 and order of sentence dated



14.10.2022 passed by learned Additional District and Sessions Judge 7th -cum-Special Judge (POCSO), Purnea in C.A. (POCSO) Case No. 01 of 2020 (arising out of Complaint Case No. 01 of 2020) is, hereby, set aside.

26. Accordingly, above named appellant is acquitted from the charges levelled against him.

27. Appellant is on bail, upon acquittal bailors and sureties stands discharged from their liabilities.

28. Office is directed to send back the trial court records along with a copy of the judgment to the court below forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.08.2024
Transmission Date	08.08.2024

