

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.393 of 2004**

Binod Kushawaha, son of Ramautar Kushawaha, resident of village-Shripat
Nagar, P.S.-Piparasi, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Bashistha Narayan Mishra, Advocate
For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 06-12-2025

Heard learned counsel for the appellant and learned APP
for the State.

2. The appellant has filed the present appeal assailing the
judgment of conviction and order of sentence dated 08.05.2004
passed by the learned 6th Additional Sessions Judge, Bettiah in
Sessions Trial Nos. 84 of 2002, arising out of Piprasi P.S. Case
No.06 of 2000 by which the appellant has been convicted for
the offence punishable under Section 366 of the Indian Penal
Code and has been sentenced to undergo rigorous imprisonment
for seven years and also to pay a fine of Rs.1,000/- and in
default to pay fine, he has to undergo further rigorous
imprisonment for three months.

3. The prosecution case is based on the written complaint
of one Nandu Rai to the effect that on 26.02.2000 at 5.00 A.M.,



his minor daughter, aged about 15 years, went outside to attend the call of nature, but she did not return and she was kidnapped by the appellant Binod Kumar Kuswaha for the purpose of marrying her. During the course of investigation, the victim was recovered.

4. On the basis of aforesaid written complaint, the police instituted Piprasi P.S. Case No.06/2000 for the offence under Sections 363, 366, 366A of the Indian Penal Code. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the co-accused persons including the appellant under sections 363, 366 and 366(A) of Indian Penal Code, 1860. Thereafter, cognizance has been taken for the offence under sections 363, 366 and 366(A) of the Indian Penal Code. The case has been committed to the court of sessions, where charges were framed under section 366(A), to which, the appellant pleaded not guilty and claimed trial.

5. During trial, the prosecution examined altogether nine witnesses in support of its case. P.W. 1 is Bhim Baitha (neighbour of the informant), P.W.2 is Mathura Rai (neighbour of the informant), P.W. 3 is Heera Bin (neighbour of the informant), P.W. 4 is Gayanti Devi (mother of the victim), P.W. 5 is Lal Parikhan Rai, who is resident of another village, P.W. 6



is Purnima Kumar @ Poonam (the victim girl), P.W. 7 is Nandu Rai (informant and the father of the victim girl himself), P.W. 8 is Noor Mohammad Mansoori and P.W.9 is Sk. Murtuza (both are formal witnesses).

6. The defence did not examine any witness on its behalf.

7. The learned trial court after hearing the parties and considering the materials available on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, accordingly, the aforesaid judgment of conviction and order of sentence was passed, which is under challenge before this Court.

8. The learned counsel for the appellant submits that P.Ws. 1, 2, 3 and 5 have been declared hostile by the prosecution. P.Ws. 8 and 9 are formal witnesses. So far as the remaining three witnesses, i.e., P.Ws. 4, 6 & 7 are concerned, through came in support of allegation made by the informant, but they could not support of manner of occurrence by giving contradictory statements. P.W. 4 stated that in the morning the victim took a shawl from her and went outside the house and then she did not come back, while P.W. 6 stated that she was kidnapped from her house while she was sleeping, but contrary



to the P.W.7, he stated in his deposition that his daughter was kidnapped by the appellant while she had gone to attend the call of nature. The learned counsel further submits that neither P.W. 4 nor P.W. 7 claimed to see taking away of the victim by the appellant, whereas P.W. 6 narrated another story for taking away to her house. The learned counsel further submits that the informant in his written report specifically stated that her daughter was married in the year 1999 giving age of his daughter as 15 years, while the doctor assessed her age to be 16-17 years. But the learned trial court assessed her age to be 20 years at the time of her examination besides the fact that admittedly she was a married lady. The learned counsel further submits that the victim (P.W.6) in her deposition stated that at the time of her kidnapping, she was a married lady whose marriage was solemnized one year back, while the appellant forcibly married her but she again solemnized marriage for the third time with one Surendra Rai and that version shows that she was not at all satisfied with her first marriage and, as such, she went away with the appellant for the purpose of marriage. But while the case was lodged, the police recovered her and when the appellant was taken into custody, she solemnized third marriage with another man, namely Surendra Rai. The learned



counsel further submits that the victim was/is not a lady of a good moral and character and she always lead her life according to her sweet will, but the appellant has been punished for no reason. Thus, learned counsel submits that in any event, the conviction of the appellant under Section 366 IPC is not sustainable in the eyes of law. The learned counsel lastly submits that the appellant has remained in judicial custody for more than four years. The appellant is facing this *lis* from the year 2000. Therefore, it is prayed by the learned counsel that the judgments and orders of the learned courts below may be set aside and the appeal may be allowed.

9. The learned APP for the State vehemently opposes the submission made on behalf of the appellant. The learned APP submits that the prosecution has succeeded in proving its case beyond all reasonable doubts and the learned trial court has rightly convicted the appellant. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

10. From perusal of record, I find that the learned trial court has considered in detail the evidence of prosecution witnesses . The evidence of the witnesses have been discussed and judgment of conviction and order of sentence were passed



based on this discussion. Further, the learned trial court also considered the grounds which are being raised before this Court while disposing of the appeal. The learned trial court rightly found the age of the victim to be below 18 years on the date of occurrence and also found that the appellant took the minor victim to be girl to different places with intent that she might be compelled to marry him against her will. This fact constituted the offence punishable under Section 366 IPC.

11. In view of the aforesaid facts and the depositions of the P.Ws. 4, 6 and 7, duly discussed by the learned trial court, I am of the considered opinion that the view, taken by the learned trial court, is plausible one and does not require any interference by this Court in appeal.

12. However, considering the fact that the appellant has already undergone incarceration for more than four years in this case and further considering the fact that he is facing this *lis* from the last 25 years, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the sentence awarded to him is reduced to the period already undergone by him.

13. Consequently, the conviction of the appellant is affirmed and he is sentenced to the period already undergone by



him. The fine sentence is affirmed.

14. With the aforesaid modification in the sentence, the present appeal is disposed of.

15. Office is directed to remit back the LCR to the court concerned immediately.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2025
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