

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.417 of 2005

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1. Binod Kumar Chaudhary, son of Jamuna Chaudhary
 2. Kaushalya Devi, wife of Sudama Chaudhary
 3. Shanti Devi, wife of Sipahi Chaudhary.

All are resident of village-Darbari Bigha, P.S.-Daudnagar, District-Aurangabad.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Ms. Sneha Shruti, Advocate

For the Respondent-State: Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-09-2025

This appeal has been preferred by all above-named three appellants/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the CrPC') challenging the judgment of conviction dated 26.07.2005 passed by learned Additional Sessions Judge, Fast Track Court No.-IV, Aurangabad in S. Tr. No.111 of 2000/126 of 2003, whereby the concerned Trial Court has convicted the appellants/convict for the offences punishable under Section 363 and 120-B of the Indian Penal Code (for short 'IPC') and sentenced them to undergo rigorous imprisonment for three years along with fine of Rs.500/- each and in default of payment of fine, to further undergo imprisonment for six



months for each of the offences. Both the sentences have been ordered to run concurrently.

2. As per FIR (Exhibit Nos. 4, 4/1 & 4/2), the minor daughter of the informant namely, Raghubansh Singh (PW-4), aged about 16 years was kidnapped by Binod Kumar Chaudhary (appellant no.1) along with his family members namely, Shanti Devi, his parents/co-accused namely, Yamuna Chaudhary, Malti Chaudhary and Sudama Chaudahry, his wife Kaushalya Devi on 09.07.1999. It is also alleged thereof that regarding occurrence, a '*sanha*' was lodged with Daudnagar Police Station on 16.07.1999 under impression that due to mental disturbance, the daughter of the informant went missing. The informant claimed to know the real fact behind the occurrence, as he witnessed the notice pasted on notice board of Registry office of Daudnagar, regarding proposed marriage of his victim daughter. The notice was said to be witnessed by Ram Pravesh Prasad, Bikarma Ram and Mahendra Kumar.

3. With aforesaid information as given by informant/PW-4, Daudnagar P.S. Case No. 138 of 1999 was



registered on 08.11.1999 for the offences punishable under Sections 366 and 120-B of the IPC.

4. On the basis of materials collected during investigation, the police submitted the charge-sheet against the appellants/accused, on the basis of which, the learned Jurisdictional Magistrate took cognizance *qua* occurrence against appellants/accused for the offences punishable under Sections 366 and 120-B of the IPC and committed the case to the Court of Sessions under Section 209 of the CrPC for trial and disposal.

5. The learned Trial Court on the basis of materials available on record, framed charge against the appellants/accused under Section 366-A and 120-B of the IPC on 15.05.2002, for which, the accused/appellants pleaded not guilty and claimed for trial.

6. During the trial, the prosecution as to establish its case, examined altogether nine witnesses, which are:- PW-1 Bijendra Kumar, PW-2 Rajendra Kumar, PW-3 Jeera Devi, PW-4 Raghubansh Singh, PW-5 Dr. Nirmala Kumari, who examined the victim, PW-6 Sangita Devi (victim), PW-7



Ramji Singh, PW-8 Bharat Singh and PW-9 Ram Narain Singh.

7. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Signature of informant/PW-4) on seizure list.
Exhibit-1/A	Signature of Ramji Singh on seizure list.
Exhibit-1/B	Signature of Bharat Singh on seizure list.
Exhibit-2	Entire seizure list.
Exhibit-3	Written FIR.
Exhibit-4, 4/1 and 4/2	All medical reports.
Exhibit-5	Statement of victim recorded under Section 164 of the CrPC.
Exhibit-6	Formal FIR.

8. No defence witness was examined during trial on behalf of accused persons.

9. Considering the materials and testimony available on record, the learned trial court convicted the



appellants for the offences punishable under Section 363 and 120-B of the IPC and sentenced to them to the manner as indicated above.

10. Being aggrieved with aforesaid judgment of conviction, the appellants/convict preferred the present appeal. Hence, the present appeal.

ARGUMENT ON BEHALF OF APPELLANTS/CONVICT

11. Ms. Sneha Shruti, learned counsel appearing for the appellants submitted that the victim was major, as it is apparent from the testimony of PW-5 Dr. Nirmala Kumari, who, on the basis of radiological examination, stated that she was between the age group of 18-19 years. It is also pointed out that the victim went out of her own sweet will with appellant no.1 Binod Kumar Chaudhary to solemnize her marriage, as she was acquainted with him since her school life and was in love with him. It is pointed out that she remained with appellant/accused Binod Kumar Chaudhary for long three months in Hajipur, thereafter, she visited to Bihta, Hariharganj and finally she was recovered from Dehri. It is pointed out that even the FIR (**Exhibit-3**) is suggesting that



the victim was mentally disturbed, which was the reason shown first for her missing but, subsequently, as notice *qua* marriage of victim before registry office was seen by the informant with appellant Binod Kumar Chaudhary, the present case was lodged after three months of the occurrence i.e. on 08.11.1999. It is submitted that in view of same, it cannot be said that the victim was kidnapped. It is also pointed out by learned counsel that the sole witness of the alleged kidnapping is victim herself and her testimony is not of sterling nature, that on the basis of which, it can be said that she was kidnapped though she was deposed to kidnap on gun point by appellant Binod Kumar Chaudhary. It is submitted that rest of the appellants are distant relatives of appellant no.1. It is also pointed out that similar allegation was raised against the parents/co-accused of appellant no.1 namely, Binod Kumar Chaudhary, namely, Jamuna Chaudhary and Malti Devi but, they were acquitted by the learned trial court with same available evidence. It is pointed out that in view of aforesaid, the judgment of conviction *qua* appellants as recorded by the learned trial court is bad in eyes of law and,



therefore, same is fit to be set aside.

11.1. Arguing further, it is pointed out by learned counsel that all witnesses are the family members of the victim and, therefore, they are interested witnesses and also they are not the eye-witness of the occurrence of kidnapping. Therefore, their testimony are not appears reliable and convincing as to secure the conviction. It is also pointed out that the Investigating Officer of this case was not examined, therefore, the place of occurrence and other material things were not brought on record. It is also pointed out that the non-examination of Investigating Officer deprived the appellants from their valuable right of defence, as they could not contradict the Investigating Officer on material points particularly, when the entire conviction is recorded on the basis of testimony of victim, who examined before the learned trial court as PW-6.

ARGUMENT ON BEHALF OF STATE

12. Mr. A.M.P. Mehta, learned APP appearing for the State while opposing the appeal submitted that the



allegation of kidnapping is specific against appellants, as it transpires from the testimony of victim. It is submitted that there is no apparent reason to doubt the version of victim, It is also submitted that the victim remained with appellant no.1, namely, Binod Kumar Chaudhary continuously for three months under the threat of her life, as it is apparent from her testimony. However, he could not disputed the notice published before the Registry Officer, Daudnagar *qua* marriage of victim with appellant no.1.

13. I have perused the trial court records and materials available on record and heard the arguments as canvassed by learned counsel appearing for the parties.

14. It is pertinent to mention that all the appellants were acquitted from the charge as raised under Section 366-A of the IPC.

15. At the outset, it would be apposite to mention here that the appellants were convicted for the offence punishable under Section 363 of the IPC though, charge was framed under Section 366-A of the IPC.

16. Taking note of aforesaid, it would be apposite



to reproduce Sections 361 and 363 of the IPC for better understanding of law *qua* kidnapping, which are as under:-

“361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

363. Punishment for kidnapping.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

17. Upon perusal of record, it transpires that the informant, who is the father of the victim i.e. PW-4, PW-1 and PW-2, who are the own brothers of the victim, PW-3, who is the mother of victim are not the actual eye-witness of



the kidnapping. Their deposition is based upon the hearsay input and almost with same narration, as it was stated by victim, therefore, their testimony is not of such relevance to examine the matter whether the conviction under Section 363 of the IPC by learned trial court was justified or not.

18. The most important witness of crime in question is victim herself, who examined before learned trial court as PW-6. It transpires from her testimony that on the date of occurrence at 7:30 P.M., she went to nearby forest to attend her natural call along with appellant No.2, Kaushalya Devi and appellant No.3, Shanti Devi. She saw the appellant Binod Kumar Chaudhary along with one Sudama Chaudhary (not appellant) were sitting in forest. It was deposed that seeing these two persons, the appellants Kaushalya Devi and Shanti Devi flee away from there, whereafter, the appellant Binod Kumar Chaudhary and co-accused Sudama Chaudhary kidnapped her on point of pistol and also advanced her threat to life. Thereafter, she was taken to Patna by bus, whereafter Sudama was returned but, she was taken to Hajipur by appellant Binod Kumar Chaudhary, where she remained



together for two months. After that, she was brought to Bihta, where she remained together for 10-15 days in maternal house of Binod Kumar Chaudhary and further, thereafter, she was taken to the house of sister of appellant Binod Kumar Chaudhary, where she remained together for ten days, thereafter she was taken to Hariharganj by appellant no.1 Binod Kumar Chaudhary, from where, she was taken to parental village of maternal aunt at Dehri, where she was threatened by appellant no.1 Binod Kumar Chaudhary. It was deposed that the villagers reported the matter to police, thereafter, she was rescued by police from captivity of appellant no.1 Binod Kumar Chaudhary. Her statement was recorded before the Magistrate, where she identified the signature, which was exhibited as **Exhibit No.5**. She also confirmed her medical examination, which was taken place in Sadar Hospital, Aurangabad. It was deposed that at the time of occurrence, the appellant no.1 was married. It was also deposed that at time of occurrence, her age was between 15-16 years. She stated to have remained with appellant no.1 for 4-5 months. It was deposed by her in cross-examination



that the appellant no.1 is her neighbour. She accepted to give her consent for joint photographs with appellant no.1, which upon her identification was exhibited as **Exhibit-A**. It was stated that she did not raised alarm while travelling in bus. She went on feet with appellant no.1 to his maternal uncle's house.

19. The statement of victim was recorded under Section 164 of the CrPC on 06.12.1999, where she appears to support the factum of kidnapping on point of pistol. The statement was exhibited before the trial court as **Exhibit-5**.

20. From the testimony of doctor, who examined before the learned trial court as PW-5, namely, Dr. Nirmala Kumari, who examined the victim (PW-6) it appears that she found age upon radiological examination of victim between the age group of 18-19 years.

21. It transpires from the perusal of record and testimony of all prosecution witnesses including victim that despite of the fact that she passed class-10th examination but, no birth certificate was produced during the trial. Hence,



this Court has no option to accept her age as more than 18 years.

22. Taking note of the testimony of victim, as she remained with appellant no.1 Binod Kumar Chaudhary for long four months, where on different occasions she could raise alarm, but she did not raised it. It also transpires from the testimony of victim that she remained with appellant no.1 for more than four months, which implies her consent. Therefore, the conviction as recorded by learned trial court for the offence punishable under Section 363 of the IPC appears bad in the eyes of law *qua* appellant no.1.

23. The only incriminating evidence which transpired from the testimony of victim/PW-6, as it appears *qua* appellant nos. 2 and 3 that both of them went with victim for attending natural call in nearby forest and seeing the appellant Binod Kumar Chaudhary along with co-accused Sudama Chaudhary, both of them run away. With this much material, it can be said that these two appellants ladies were under conspiracy *qua* kidnapping of victim with appellant no.1.



24. In view of aforesaid, it can be said that the prosecution has miserably failed to established the charges beyond reasonable doubt, as discussed aforesaid.

25. Accordingly, the impugned judgment of conviction and order of sentence with fine dated 26.07.2005 as passed by learned Additional Sessions Judge, Fast Track Court No.-IV, Aurangabad in S. Tr. No.111 of 2000/126 of 2003 is hereby set aside. The appellants above-named are acquitted from the charges levelled against them.

26. Since all above-named appellants are on bail, they are discharged from the liabilities of their bailors and bonds.

27. Office is directed to return back the trial court records along with a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
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