

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 403 of 2005

Ram Kumar Paswan, son of late Shivnandan Paswan, resident of village
Khalasin, P.S. Kuseshwar Asthan, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Ritwik Thakur, Advocate
		Mrs. Vaishnavi Singh, Advocate
		Ms. Kiran Kumari, Advocate
For the Respondent/s	:	Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 20-09-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. By this appeal, appellant/convicted accused Ram
Kumar Paswan is challenging the judgment of conviction and
order of sentence dated 30.07.2005 and 02.08.2005 respectively,
passed by the Additional Sessions Judge (Fast Track Court No.
1), Darbhanga, in Sessions Trial No. 345 of 2003, arising out of



K. Asthan Police Station Case No. 167 of 2002, by which the appellant was convicted for the offence under Sections 363 and 366(A) of the Indian Penal Code, and acquitted for the offence under Section 379 of the Indian Penal Code. The appellant sentenced to undergo rigorous imprisonment for five years for the offence under Section 366(A) of the Indian Penal Code and further sentenced to rigorous imprisonment for two years under Section 363 of the Indian Penal Code. It has been specifically directed that both sentences will run concurrently.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

“The informant, Ganga Paswan (PW-7), stated that on 02.11.2002 at about 09:00 PM, he was talking with his wife and elder son, namely Ajit Paswan (PW-6), regarding the solemnization of the marriage of his daughter, Bibha Kumari (PW-9). All of a sudden, his second daughter, Pratibha Kumari (PW-8), started crying. Upon hearing her cries, he received information that Ram Kumar Paswan (the appellant), along with another man, who had covered his face and was carrying arms, had pointed a pistol at the earlobe of the informant’s daughter and threatened to kill her. Due to fear, the informant’s daughter remained silent. Then they took away Bibha Kumari (PW-9).



When the second daughter, Pratibha Kumari (PW-8), objected, the accused snatched her gold chain with a locket worth Rs. 10,000/- from her. After their departure, and upon learning all the facts, the informant raised an alarm, by which the villagers reached there. He, along with co-villagers, searched for them using torchlights but failed to trace them. The elder son continued searching at various places, including Kuseshwar Asthan Bus Stand, Paro, etc., but could not find any trace. Since there was no other adult male member in the house, the informant stayed home and, in the next morning, filed a written report at the police station. It was stated in the said fardbeyan that from reliable sources, the informant had learnt that the accused, Ram Kumar Paswan, was keeping his daughter at the house of Ram Singar Paswan in village Rauta. On the said FIR, four persons signed as witnesses, namely, Prithvi Paswan (PW-1), Singheswar Paswan (PW-2), Ganga Paswan (PW-3), and Mahesh Paswan (PW-5). After registration of the FIR, the police started the investigation and initially submitted Charge Sheet No. 109 on 09.01.2003 against the accused, who was taken into custody. On the basis of the charge sheet, cognizance was taken, the case was committed to the Court of Sessions, and thereafter, the charges were framed under Sections 363, 366(A), and 379 of



the Indian Penal Code for allegedly kidnapping Bibha Kumari (PW-9) from her house with intent to make illicit intercourse and also for committing theft of the gold chain worth Rs. 10,000/- belonging to Pratibha Kumari. The accused denied the charges and claimed trial.”

4. Altogether 12 witnesses were examined, namely, Prithvi Paswan (PW-1), a neighbor and FIR witness, Singheshwar Paswan (PW-2), Ganga Paswan, son of Budhu Paswan (PW-3), Suraj Kumar Paswan (PW-4) and Mahesh Paswan (PW-5), all of whom are neighbors. Ajit Paswan (PW-6), the brother of the victim, Ganga Paswan, the informant (PW-7), Pratibha Kumari (PW-8), the sister of the victim, and Bibha Kumari (PW-9), the victim herself, were also examined. Yugeshwar Thakur (PW-10), a formal witness, who exhibited the FIR, the doctor (PW-11), who medically examined the victim, and the Investigating Officer (PW-12) were also examined.

5. The prosecution has produced four exhibits:

- Exhibit-1 and Exhibit-2 : signatures on the FIR by PW-7 and PW-10, respectively;
- Exhibit-3 : the medical report submitted by PW-11; and
- Exhibit-4 : the formal FIR submitted by PW-12.

6. After the examination of all prosecution



witnesses, the prosecution evidence was closed. Thereafter, the statement of the accused was recorded under Section 313 of the Cr.P.C. Following this, the defence produced its exhibits.

7. The defence has produced six exhibits, namely:

- Exhibit-A: Statement recorded under Section 164 of the Cr.P.C.;
- Exhibit-B: Certified copy of Final Form No. 33 of 2004;
- Exhibit-C: Certified copy of the order accepting the final form;
- Exhibit-D: Certified copy of the petition filed under Section 97 of the Cr.P.C.;
- Exhibit-E: Certified copy of the information petition dated 12.10.2002 submitted before the S.D.O., Darbhanga; and
- Exhibit-F: Certified copy of Complaint Case No. 773 of 2002 filed before the Court of the Chief Judicial Magistrate (C.J.M.).

8. The Trial Court, upon considering the entire oral and documentary evidence, found that the prosecution had proved the charges under Sections 363 and 366(A) of the Indian Penal Code against the accused (appellant) beyond all reasonable doubt. However, the charge under Section 379 of the Indian Penal Code was not found to be proved. Accordingly, the appellant was convicted under Sections 363 and 366(A) of the Indian Penal Code.

9. Being aggrieved and dissatisfied with the



judgment of conviction dated 30.07.2005 and the order of sentence dated 02.08.2005, the appellant has preferred the present criminal appeal.

10. Learned counsel for the appellant submits that the Trial Court failed to appreciate that, in the present case, the police had submitted a final form bearing Final Report No. 33 of 2004 dated 19.05.2004, concluding that the case, upon investigation, appeared to be a result of mistaken facts. This is clearly evident from Exhibit-B, yet it was completely ignored by the Trial Court. Counsel further submits that the doctor who examined PW-9 (the victim) assessed her age to be between 18 and 19 years, as stated in the evidence of PW-11. In his medical opinion, the girl was found to be within that age range. Moreover, PW-9 (the victim), in her statement, clearly stated that she is a major and had not been kidnapped by anyone. She disclosed her age as 23 years. She also stated in her evidence that her father had filed a false case against the appellant. This version is fully supported by her earlier statement recorded under Section 164 of the Cr.P.C., which is marked as Exhibit-A in this case. However, the Trial Court has completely overlooked this crucial piece of evidence.

11. Counsel further submits that although PW-9



was declared hostile, but the prosecution, with the permission of the Court, cross-examined her. Therefore, any material that emerged during her cross-examination ought to have been duly considered by the Sessions Court. However, the Sessions Court failed to properly appreciate and consider this aspect of the evidence.

12. Counsel for the appellant further submits that the prosecution has failed to produce any documentary evidence establishing the exact date of birth of PW-9 (the victim). The doctor's opinion regarding the victim's age cannot be treated as conclusive proof, as there is always a margin of variation of up to two years. This principle is supported by the judgment of the Hon'ble Full Bench of the Supreme Court of India in **State of Karnataka v. Bantara Sudhakara @ Sudha & Anr.**, reported in **(2008) 11 SCC 38**.

13. Counsel further submits that the Trial Court failed to consider that even if a witness becomes hostile, cross-examination is permissible with the Court's permission. When such cross-examination takes place, the Court must carefully consider the testimony of the hostile witness in order to ascertain the truth of the facts. In support of this argument, counsel relied on the judgment in case of **K.P. Tamilmaran v.**



State by Deputy Superintendent of Police reported in **2025 SCC OnLine SC 958**. Counsel also submits that the essential ingredients of Sections 363 and 366(A) of the Indian Penal Code are not made out in the present case, and therefore, the present appeal deserves to be allowed.

14. Learned APP for the State, on the other hand, opposes the prayer made by the counsel for the appellant and submits that the Trial Court has rightly analyzed the entire evidence of the 12 witnesses. He further submits that the doctor found the age of the victim to be between 17 and 19 years. Since her age falls within this range, it means she is a minor, and therefore, there is a categorical finding that the victim girl is a minor. Hence, the Trial Court's finding that her leaving the house on her own accord is immaterial and is completely in accordance with law. Accordingly, the Trial Court rightly convicted and sentenced the appellant. He further submits that, in the statement recorded under Section 313 of the Cr.P.C., despite clear material against the accused, he failed to explain the circumstances under which the offence was committed. Therefore, the present appeal is liable to be dismissed.

15. Upon perusal of the witnesses, it appears to this Court that PW-1, PW-2, PW-3, PW-4, and PW-5 were not



eyewitnesses but neighbors. They arrived at the informant's house after the appellant (accused) had fled with the informant's daughter. All of them stated that upon hearing the alarm (*halla*), they reached the informant's house and, upon receiving information that the accused had taken the informant's daughter away, they began searching with torches but were unable to locate anyone.

16. PW-6, the brother of the victim, disclosed that he, along with his mother and father (the informant), were sitting together when he heard the cries of his younger sister, Pratibha Kumari (PW-8). PW-8 stated that both the victim and the appellant had gone away, with the appellant using force on the victim. It was also alleged that the appellant snatched a gold chain with a locket. However, PW-6 did not witness the actual occurrence. Upon hearing PW-8's disclosure, he, along with his father, began searching for the victim using a torch but was unable to find her.

17. PW-7 is the informant himself, who disclosed that the victim is his daughter and the accused is his step-brother (*sautela bhai*). He further stated that, on the night in question, he, his wife, and his son were talking about the marriage of his daughter, Bibha Kumari (the victim), when they heard the cries



of the younger daughter, Pratibha Kumari (PW-8). They all went to the place where the cries were coming from, and Pratibha disclosed the entire *modus operandi*. It is clear from his statement that the informant did not witness the occurrence himself but became aware of the kidnapping of his elder daughter upon the disclosure made by his younger daughter.

18. The most crucial and vital witness is PW-8, the younger sister of the victim. She disclosed that the appellant was talking with her elder sister and then left in her presence. She further stated that the appellant used force on her sister, and only then did her sister go with him. She also revealed that, upon her crying, other family members were present, but by that time, the accused had already fled away.

19. PW-9 is the victim herself. It is important to note that in her statement, she denied being kidnapped and stated that she went with the appellant of her own free will. She made the same statement before the Judicial Magistrate 1st Class under Section 164 of the Cr.P.C., which is on record as Exhibit-A. Moreover, the narration she has made in her deposition during trial is almost the same deposition before the Judicial Magistrate under Section 164 of the Cr.P.C. It is also significant that, at the request of the prosecution, PW-9 was



declared hostile. However, with the Court's permission, the prosecution cross-examined her. During her cross-examination, she reiterated that she was not kidnapped but left willingly with the appellant. Notably, in paragraph 3 of her cross-examination, PW-9 reaffirmed the statement made under Section 164 of the Cr.P.C., recorded before the Magistrate on 14.04.2004, which is marked as Exhibit-A.

20. PW-10 is the formal witness, and his statement requires no further explanation.

21. PW-11 is the doctor who examined the victim and opined that her age is approximately 18 to 19 years. The doctor's report has been marked as Exhibit-3.

22. It is evident from the statement of the Investigating Officer (I.O.) that he did not conduct the entire investigation, as he was transferred to District Katihar, after which another I.O. took over and completed the investigation.

23. After hearing the parties, two crucial points arise that are decisive for this appeal. First, whether the evidence of a witness declared hostile should be rejected outright or whether the whole evidence examination and cross examination of hostile witness, must be taken into consideration. Second, when the doctor opines that the age of



the victim is between 18 and 19 years, the question is whether she should be treated as a minor or a major.

24. To address the first question, the case of *K.P. Tamilmaran (supra)* is highly relevant. In this case, the Hon'ble Supreme Court of India has laid down important principles regarding the evidentiary value of a so-called hostile witness. The relevant paragraphs are as follows:-

**Delay in Trial and evidentiary value
of so-called "hostile witness"**

15. The long and inordinate delay which has been caused in this case, right from the lodging of the FIR, speaks volumes about the gross inefficiency at the hands of the prosecution on the one hand and dilatory tactics employed by the defence on the other hand, which together led to a slow trial.

16. The second and more crucial aspect is that many of the prosecution witnesses in this case have turned, what has come to be known as 'hostile'; a fact which has been strongly pressed by the defence in their favour. The defence would also argue that the Trial Court and High Court



have mainly relied on the testimonies of the family members of Murugesan, who are interested witnesses.

17. In our opinion, there is no force in these arguments and as will be seen, there was enough material placed by the prosecution before the Trial Court, which was sufficient to prove the guilt of the accused, beyond a reasonable doubt.

18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty- one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some



cases. This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW-15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own witness. Section 154 of the Evidence Act originally read as follows:

"154. Question by party to his own witness *The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."*



20. *The Calcutta High Court, in Khijiruddin Sonar v. Emperor, 1925 SCC OnLine Cal 259, while interpreting Section 154 of the Evidence Act, held that "When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony".*

21. *But this judgment in Khijiruddin was overruled by a five-Judge bench of the Calcutta High Court in Praphullakumar Sarkar v. Emperor, 1931 SCC OnLine Cal 7. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:*



"24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is "cross-examined" to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.

Of the seven questions stated by the Division Bench I propose that we should answer four, viz.-

(3) whether the evidence of a witness treated as "hostile" must be rejected in whole or in part;

(4) whether it must be rejected so far as it is in favour of the party calling



the witness;

*(5) whether it must be rejected
so far as it is in favour of the opposite party.*

*These three questions I would
answer in the negative.*

*(6) Whether the whole of the
evidence so far as it affects both parties
favourably or unfavourably, must go to the
jury for what it is worth.*

*25. To this question, I would be
content to answer "yes", ...*

*22. Justice Buckland, in the above
case, in his concurring opinion holds that there is
no law which states that the evidence of a witness,
who has been cross-examined by its party, should
be entirely rejected. In his opinion, it is for the jury
(or the Judge) to form an opinion regarding the
value of the testimony of such a witness.*

*23. All the same, later this Court in
Jagir Singh v. State (Delhi), (1975) 3 SCC 562 held
to the contrary and approved the decision of the
Calcutta High Court in Khijiruddin. This is what*



was said in Jagir Singh by Justice Bhagwati:

"7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See Khijiruddin v. Emperor...."

24. However, it is to be noted that Jagir Singh does not refer to the five-Judge Bench decision of the Calcutta High Court in



Praphullakumar Sarkar.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., Sat Paul v. Delhi Administration, (1976) 1 SCC 727, it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in Jagir Singh, and held that what has been held in Jagir Singh would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been cross -examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony. After referring to a series of judgments on this point, the Court in Sat Paul held as follows:

"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is



cross-examined and contradicted with the
leave of the court, by the party calling him,
his evidence cannot, as a matter of law, be
treated as washed off the record altogether.
It is for the Judge of fact to consider in each
case whether as a result of such cross-
examination and contradiction, the witness
stands thoroughly discredited or can still be
believed in regard to a part of his testimony.
If the Judge finds that in the process, the
credit of the witness has not been completely
shaken, he may, after reading and
considering the evidence of the witness, as a
whole, with due caution and care, accept, in
the light of the other evidence on the record,
that part of his testimony which he finds to
be creditworthy and act upon it. If in a given
case, the whole of the testimony of the
witness is impugned, and in the process, the
witness stands squarely and totally
discredited, the Judge should, as matter of
prudence, discard his evidence in toto.



53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution - which is not to be treated as a rule of law in mind, said that the evidence of such a witness is to be rejected en bloc."

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded [Also see: Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731].

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154



of the Evidence Act now reads as under:

154. Question by party to his own witness. - (1) *The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.*

(2) *Nothing in this section shall disentitle the person so permitted under subsection (1), to rely on any part of the evidence of such witness.*

(Emphasis Provided)

29. *By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.*

30. *The word 'hostile' or 'hostile witness' has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be that the declaration of witness as 'hostile witness' carries a specific significance under the English law, from where this term has been derived, where liberty is only granted to a*



side to cross-examine its own witness when such declaration of 'hostility' is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of 'hostility'. This has been explained by this Court in Sat Paul:

"38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions



which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi, [AIR 1922 PC 409: 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as



"declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring misleading legacy of confusion, and conflict that had so long vexed the English Courts."

(Emphasis Provided)

31. The phrase 'hostile witness' is commonly, used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some,



though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term 'evidence' given under Section 3 of the Evidence Act. It reads as follows:

"Evidence" - *"Evidence" means*

and includes-

(1) all statements which the



Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry: such statements are called oral evidence:

(2) all documents including electronic records produced for the inspection of the Court; such document are called documentary evidence."

(Emphasis Provided)

33. The statements made by a witness in Court, including in cross- examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or



how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: *Paulmeli v. State of T.N.*, (2014) 13 SCC 90, *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.



36. It is though trite and much overstated but the maxim "falsus in uno, falsus in omnibus, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in Bhajju v. State of Madhya Pradesh, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable



evidence..."

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.

37. One of the many reasons for witnesses turning hostile is the long delay usually caused in a trial. This is again unfortunate but true in our country. The present case is no exception. Here, the incident occurred in the year 2003, the



case was committed to Sessions in the year 2010 and charges were framed as late as in the year 2017, and the judgment was finally pronounced by the Trial Court on 24.09.2021. It took eighteen years!

38. The role played here by the accused in delaying the trial cannot be discounted, as already stated. The records also reveal that the depositions of most of the prosecution witnesses were recorded only towards the end of the year 2017. Moreover, CBI in this case had filed its charge-sheet, inter alia, against two persons belonging to Dalit community. Although, these two (A-4 and A-9) were finally acquitted by Trial Court as there was absolutely nothing against them, but in the process, prosecution had to declare many of its witnesses belonging to the Dalit community as hostile simply because these witnesses did not depose against A-4 and A-9. It is also clear now, in any case, that these two were wrongly made accused by the prosecution. All the same, the benefit of such witnesses turning hostile cannot be



given to other accused who were found involved in the offence, on the overwhelming weight of other evidence.

25. Hence, it has been held that the entire evidence, insofar as it affects both parties either favorably or unfavorably, must be considered in its true spirit. In the present case, in light of the evidence of PW-9, this Court finds that the entire allegation of kidnapping has collapsed, and therefore, no case of kidnapping is made out.

26. With regard to the second question, the judgment of *State of Karnataka (Supra)* is most relevant. The Hon'ble Supreme Court of India held that in medical or doctor's findings regarding age, two years should be added to the upper limit of the estimated age without any foundation. The rationale behind this approach is explained in detail in the said judgment. In the present case, no documentary evidence proving the victim's exact age has been placed before this Court. The age has been determined solely based on ocular evidence, which suggests that the girl is a minor, whereas the doctor, after physical examination, opined her age to be 18-19 years.

27. In light of the judgment passed by the Hon'ble Supreme Court of India referenced above, this Court concludes



that two years must be added to the upper age limit, and accordingly, the victim should be treated as a major, not a minor.

28. Upon the reasoning mentioned above, and particularly in light of the statement of the victim herself (PW-9), the medical opinion regarding her age, and her statement recorded under Section 164 of the Cr.P.C., which she affirmed during cross-examination, this Court finds that the prosecution's attempt to contradict her version is not sustainable. Her consistent version, supported by Exhibit-A, is admissible under Section 145 of the Evidence Act. Therefore, this Court concludes that the appellant did not commit the offence of kidnapping, and as such, the conviction of the appellant under Sections 363 and 366(A) of the Indian Penal Code cannot be sustained.

29. Accordingly, the judgment of conviction dated 30.07.2005 and the order of sentence dated 02.08.2005, passed by the Additional Sessions Judge (Fast Track Court No. 1), Darbhanga, in Sessions Trial No. 345 of 2003, arising out of K. Asthan Police Station Case No. 167 of 2002 is hereby set aside. The present criminal appeal is hereby allowed. The appellant is acquitted of the charge under Sections 363 and 366(A) of the Indian Penal Code.



30. The appellant, namely, Ram Kumar Paswan, of Cr. Appeal (SJ) No. 403 of 2005, is already on bail, and having been acquitted under Sections 363 and 366(A) of the Indian Penal Code, let him be discharged from the liabilities of bail bonds and sureties, if any.

31. Let a copy of this judgment be sent to the concerned Court below along with the LCR.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA

