

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.346 of 2013

Arising Out of PS. Case No.-132 Year-2010 Thana- BIHAR District- Nalanda

Munna Ravidas @ Munna Kumar S/O Binda Ravidas R/O Village- Misi, P.S.-
Bakhtiyarpur, District- Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv Ms. Vaishnavi Singh, Adv Mr. Ritwik Thakur, Adv
For the Respondent/s	:	Mr.Smt.Abha Singh App

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 07-01-2025

Heard Mr. Ajay Kumar Thakur, along with Ms. Vaishnavi Singh and Mr. Ritwik Thakur, learned counsels for the appellant and Mrs. Anita Kumari Singh, learned APP for the State.

2. The present appeal has been filed under Section 374(2) of the Criminal Procedure Code against the judgment and order passed by the 1st Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 723/2010 on 18.04.2013 where the appellant was convicted under section 366-A of the Indian Penal Code and vide order dated 23.04.2013 he was sentenced to undergo rigorous imprisonment for 5 years and a fine Rs. 1000/- and in default of payment of fine to



undergo imprisonment for 15 days.

3. The prosecution case in brief is that the informant Bindu Kumar lodged a written report before Police Inspector cum-S.H.O., Bihar P.S. on 12.6.2010 alleging that his daughter Priyanka Kumari, aged about 14 years had gone to girl's high school for studying on 12.6.2010 at about 6 A.M. but she did not return till 2 PM. When he returned to his house for lunch then he noticed that his daughter Priyanka Kumari had not returned from school and he became suspicious and went to his daughter's school, i.e. Balika Uchhya Vidyalay ,Kuthari and on inquiry made from the guard he was told that the school closed at around 9.30 AM and all the girls had gone to their home. Thereafter, the informant returned to his house and searched for his daughter in the house as well. In the course of his search he recalled that about a month ago, he received a call from the mobile number 9279866224 and that the person who called was one who used to visit his house sometimes. His daughter had informed him about the boy named Munna Ravidas son of Bindo Ravidas of village Misi P.S.-Bakhtiyarpur District. Patna who was then living at Mohalla Amber near Sudha Dairy P.S. Bihar District Nalanda and she alleged that Munna Ravidas used to come to his house in his absence, and therefore, the informant



suspected that the said boy Munna Ravidas had kidnapped his daughter in order to get married to her. On the basis of the written report of the informant Bihar P. S. Case no. 132/10 was registered under Section 366 A of the Indian Penal Code on 12.06.2010. After investigation, the police submitted a charge-sheet against accused Munna Ravidas @ Munna Kumar under Section 366A of the I.P.C. The Learned Chief Judicial Magistrate took cognizance of the matter and the case was later on committed to the Court of Sessions and after commitment, the record was finally presented before the learned trial Judge. A formal charge was framed against the accused under Section 366A of the Indian Penal Code on 23.03.2011 by the then Addl. Sessions Judge-V, Nalanda. The charge was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined altogether ten witnesses in order to substantiate the charge levelled against the accused, out of them PW-1 Priyanka Kumari (victim), PW-2 Bindu Kumar (informant), PW-3 Dr. Aarti Archana(M.O), PW-4 Dr. Ramadhar Sharma, PW- 5 Dr. Ramanand Prasad Singh, PW- 6 Dr. Awadhesh Kumar Sinha are all medical officers and member of Medical Board who have examined the Victim, PW-



7 Raghubansh Narayan, Judicial Officer, who has taken statement of the victim U/s 164 Cr.P.C.; PW-8 Heera Lal Chaudhary (I.O. of this case); PW-9 Bhagwat Prasad and PW-10 Vikaram Kumar.

5. Out of the ten witnesses, PW-9 Bhagwat. Prasad and PW-10 Vikram Kumar were declared hostile witnesses by the prosecution as they have not supported the case of prosecution.

6. PW-1 Priyanka Kumari is the victim in the instant case. She stated during her examination-in-chief that the incident took place on 12.06.2010. At about 6.30 AM in the morning on that day she went to her school and at around 9.30 AM classes were over and at that time the accused/appellant Munna was standing near the gate of her school. She alleged that the accused/appellant Munna threatened to take her away to his house for performing marriage with her. She stated that the accused/appellant Munna's house was near the Girl's High School, Biharsharif. She stated that she objected to going with him but Munna took her to his house and has committed rape on her. She wanted to go back home but she was locked in his house. She further stated that the next day the family members of accused/appellant Munna and the Mukhiya came to his house



at around 1:30 PM in the noon and were taking them to the police station and on the way they met the police who took them to the station. The police interrogated her and on the next day she was taken to hospital where she was examined and taken before the Magistrate for recording her statement under Section 164 of the Cr.P.C which is marked as Ext-1. After giving her statement before the Magistrate in court she went home with her father.

6.i. In her cross-examination, PW-1 has stated that her school was close to the appellant/accused's house. She did not know the name of the teacher. She further stated that she came out of the school 10 minutes prior to her classmates and she was standing at the gate where the accused was also standing. She stated that the other girls raised no objection when the accused grabbed her hand and took her into the *gali*. She shouted for help but none of the girls came to help her. PW-1 has also stated that the road outside her school was a busy road and on her *hulla* a crowd of around 100-200 people had assembled but no one interfered although the accused Munna was alone. She stated that she was in acquaintance with the accused one to two months prior to the occurrence. One person named Dhananjay used to live in her house and the



accused/appellant Munna used to visit him and that is how she came to know him. She stated that she gave her statement before the police as per the direction of her father and uncle. PW-1 denied giving any statement regarding commission of rape on her in her cross-examination.

7. PW-2 Bindu Kumar is the informant in the instant case as well as the father of the victim. He stated in his examination-in-chief that the occurrence took place on 12.06.2010 and on that day his daughter had gone to Girl's High School but she did not return till 2 PM. He went to her school looking for her but he was informed that on that day the school closed at around 9 AM. only and all girls had already gone. After trying to look for her he went to the P.S. and lodged a written report regarding the missing of her girl and also said that he had named the accused/appellant Munna on whom he had suspicion. He stated that he had a suspicion that the accused/appellant Munna Kumar might have taken away her daughter with the intention to marry. He also stated that the police had managed to record the statement of his daughter before the Magistrate. He also stated that his daughter told him that the accused/appellant Munna had taken her away in order to marry her.



7.i. In his cross-examination PW-2 stated that whatever was written in the report which he filed in the police station was based on suspicion. When he named Munna Kumar as a suspect, he had no personal knowledge about him. He knew one Dhanajay who used to live in his house and he knew the name of the accused/appellant Munna from him. He also stated that he did not identify the accused/appellant Munna before that. During cross-examination he also stated that he had not seen the attendance register in the school nor did he ask any teacher of the school about his daughter. He also stated that he did not know the name of *Darwan* of that school.

8. PW-3 Dr. Arti Archana is the Medical officer in the instant case. She stated in her examination-in-chief that on 14.06.2010 she was posted as Medical officer in Primary Health Centre, Giriyak and on that day she was deputed at Sadar Hospital Biharsharif and on 14.06.2010 she examined Priyanka Kumari, D/O Bindu Kumar of Mohaila Tikulipar P.S. Bihar District, Nalanda and found the following injuries on her person:-

Chart C.B.s. Cardiac vascular system-No abnormalities.

Secondary sexual organ well developed .



*Pelvic examination Vagina in two Finger
easily administer.*

Hymen -old ruptured.

No any internal and external injuries

*Microgical examination -vaginal smale
smear spromatozan not found.*

RBC-nil

W. B. C. - nil

Epithatial cell present.

Final opinion:- Priyanka Kumari D/O Bindu

Kumar was habituated to sexual intercourse.

The injury report is in her pen and signature which is marked as
as Exhibit-3

8.i. On the same day, i.e. 14.05.2010 a medical board was constituted for determining the age of PW-1 Priyanka Kumari. The medical board was constituted in the chairmanship of Dr. R.B. Ranjan, Civil Surgeon C.M.O. Nalanda, and Dr. A. K. Singh, Dr. R.W. Prasad Singh, Dr. Ramadhar Sharma and myself were the members of the board. On the day of examination, PW-1 Priyanka Kumari D/O Bindu Kumar of Mohalla Tikkulipar P.S. Bihar District Nalanda appeared before the medical board for the first time. Clinical Examination



showed:-*overage built*

Sexual character developed.

Dental examination -8/8, 8/8, 16 teeth in upper

Radio-logical examination -X-Ray pelvis,

A.P. view X-Ray both wrist: A.P. view,-Ray

both elbow A.P.view, X-Ray both knee AP.

view X-Ray to be done in presence of medical members.

8.ii. On the basis of above mentioned physical, dental and radio-logical findings the age of Priyanka Kumari D/O Bindu Kumar is between 17 to 18 years. She has also proved her signature on the medical board report which is marked as Ext.4 and 4/1.

9. PW-4 Dr. Ramadhar Sharma was also a member of the medical board constituted under the chairmanship of Dr. R. B. Ranjan, C.S. cum C.M.O. Nalanda to determine the age of Priyanka Kumari D/O Bindu Kumar of Mohalla Tikullpar P.S. Bihar District Nalanda. He stated in his examination-in-chief that Dr. A.K. Singh, Dr. R.N. Prasad Singh, and Dr. Arti Archana were also in the medical board and also stated that on the basis of physical, dental and radio-logical



findings, the age Priyanka Kumari D/O Bindu Kumar was assessed to be between 17 to 18 years. During cross examination he had stated that he was posted as dental surgeon at the time of examination and there was a separate doctor for radio-logical examination.

10. PW-5 Dr. Ramanand Prasad Singh was also a member of the medical board. He stated during examination-in-chief that on 14.06.2010 a medical board was constituted under the chairmanship of Dr. R. B. Ranjan C.S. Cum C. M.O. Nalanda for determining the age of Priyanka Kumari D/O Bindu Kumar. After physical , dental and radio-logical examination the board arrived at the conclusion that the age of Priyanka Kumari was between 17 to 18 years.

11. PW-6 Dr. Awadhesh Kumar Sinha is also a member of medical board. He stated during evidence that, on 14.06.2010 a medical board was constituted for determination of the age of Priyanka Kumari. After physical, dental and radiological examination the board found that the age of Priyanka Kumari D/O Bindu Kumar was between 17 to 18 years.

12. PW-7 Raghubansh Narayan is the judicial officer who had recorded the statement of Priyanka Kumari



under 164 Cr.P.C. He stated during his examination-in-chief that on 14.06.2010 he was posted as Judicial Magistrate 1st. Class, in Civil Court, Nalanda and on that day he recorded the statement of Priyanka Kumari under 164 Cr.P.C. and after recording her statement the statement was read over and explained to her.

12.i. In his cross examination he stated that before recording the statement under Section 164 Cr.P. C he had asked Priyanka Kumari to give her statement without any fear but this was not written by him on the statement. He also stated in his cross that he had not mentioned in his statement who had produced the victim Priyanka Kumari before him for recording the statement. He further stated that he assessed the age of Priyanka Kumari as 15 years from her appearance only and no document was presented before him at the time of such assessment.

13. PW-8 Heeralal Chaudhary is the Investigating Officer of this case. He stated during examination that on 12.06.2010 he was posted at Bihar P.S. as S.I. and Sri B. K Raut Inspector of Bihar Police had entrusted the investigation of Bihar P.S. case no. 132 of 2010 to him and after taking charge of the investigation he had taken restatement of the informant



and inspected the place of occurrence and according to him the place of occurrence is the main gate of S.S. Balika Uchhya Vidyalaya, Biharsharif which is located at the northern side of Amber Kutchari road where the victim was taken away by the accused.

13.i. In his cross examination the Investigating Officer stated that there were many buildings near the place of occurrence but he did not take the statement of any tenant. He further said that he did not enquire about the attendance register nor did he record the statement of the other girls from the school who were reading with the victim. He stated that he had also not inquired from the principal of the school where the victim was reading and neither did he question the gate man of the school. He also stated that the victim did not show the house of the accused where he was kept. He also denied that he has handed over the victim girl to her parent before recording statement under 164 Cr.P.C. and also stated that at the time of recording the statement under Section 164 the mother and father of the victim were not present.

13.ii.. During his cross examination he stated that he had recorded in his diary about the place from where the girl was recovered and she was recovered from the back of the



Municipality but he has not mentioned the name of the house from where she was recovered in his case diary. He also stated that medical examination of the boy was not done and that he did not record the statement of Dhananjay who used to live as a tenant in the house of informant, Bindu Kumar.

14. Learned counsel for the appellants at the outset, submits that the trial Court has erred in convicting the appellants for the charges levelled against them, in-spice of having no materials available on record, except for the oral evidences of the prosecution witnesses. He next submits that no independent witnesses has been examined in this case and there has been no such occurrence of an incident as alleged by the prosecution. It has been submitted that the girl is an adult and the informant had named the appellant/accused on the basis of a mere suspicion. She lastly submits that prosecution has failed to prove the charge levelled against the appellant beyond all reasonable doubt despite that the trial Court has convicted them, therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused/appellant standing benefit of doubt.

15. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submits that



there is direct allegation against the present appellants, for assaulting the informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

16. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

17. Having deeply studied and scrutinized the facts and the material on record of the present case, it is evident to note that there are material inconsistencies in the deposition of PW-1 (victim) and PW-2 (informant). PW-1 in her examination-in-chief she stated that the appellant/accused dragged her to his house but no external injuries have been reported by the doctor in the injury report. Further, there was no mention of the commission of rape by the victim or by the informant in the written report or in her statement under Section 164 Cr.P.C but she has stated the same in her examination-in-chief. The statement of the victim that none of the school girls came to rescue her is also not corroborated by any evidence. She also mentioned that there were around 100-200 people who saw that Munna was dragging her to his house but none of them did anything to help even when Munna was all alone. This is also



suspicious as none of the eye-witnesses have been examined regarding the occurrence during the trial.

18. PW-2, the informant has stated in Para 3 of his cross-examination that he got the information about the name of Munna from Dhananjay, who used to live in his house and he recognized Munna when he saw his daughter and Munna at the police station. He has also stated that he did not recognize Munna before the incident and yet he filed the written report against him. PW-1 has stated that her father reached the police station after she arrived there and she told him about the incident at the police station following which he filed the written report. It has been mentioned in the report that the incident occurred on 12.06.2010 but based on the statement of PW-1, she informed her father (PW-2) about the incident on 13.06.2010 after which the report was filed. Since PW-2 did not know the accused or his name before he saw him with his daughter at the police station which raises suspicion over the credibility of the statements made in the FIR as it is clear that the FIR was ante-dated. PW-1 also stated that she did not know the name of the accused' father or the name of his village before the date of incident and that the accused told her his father's name and the name of his village when he took her to his house.



This appears suspicious as why would the accused tell her about himself when he is allegedly taking her away. Thus the above statement of the victim is also not reliable. All of these facts raises serious doubt over the credibility of the prosecution's case.

19. The Investigating Officer in the instant case did not inquire the gate-men of the school or any of the school girls about the occurrence which further weakens the prosecution's case. The informant in the instant case filed the written report after the victim told him about the occurrence and name of the accused and he also stated in his deposition that he did not know him before this incident. In the instant case, the medical board which was formed for the purpose of determining the age of the victim, came to the conclusion that the girl was about 17-18 years of age and one of the doctors even suggested that she was above 18 years of age. No injuries were found on the body of PW-1, the victim which renders her statement unreliable. The present case thus suffers from material inconsistencies in the statements of the witnesses. Further, none of the eye-witnesses in the case have been examined. Thus in the instant case, the offence under Section 366A Indian Penal Code has not been established beyond shadow of all reasonable



doubt. Considering this fact, prosecution has failed to establish this case beyond shadow of all reasonable doubt, therefore, in such circumstances, it may not be proper to convict the appellants/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

20. Hence, the judgment of conviction and order of sentence dated 18.04.2013 passed in Sessions Trial No.723 of 2010, arising out of Bihar P.S. Case No. 132 of 2010 by the learned Additional Sessions Judge-I, Nalanda, Bihar Sharif, is set aside and the appellant is acquitted from all the charges levelled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

21. Accordingly, the appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	NA
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