

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1219 of 2024

Arising Out of PS. Case No.-130 Year-2018 Thana- KALYANPUR District- Samastipur

Kesari Kumar Mehta @ Keshri Kumar Mehta, male, aged about 52 years, S/o
Late Sundar Mahto, R/o Village-Rampura, P.S-Kalyanpur, Distt.- Samastipur.

... .. Appellant

Versus

1. The State of Bihar
2. Ram Bali Mahto, male, aged about 36 years, S/o Pritam Mahto, R/o Village-Govindpur Khajuri, Ward No.5, P.S- Kalyanpur, Distt.- Samastipur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Suraj Narayan Yadav, Advocate Mr. Bijay Bhushan Prasad, Advocate Ms. Rani Shashi Bharti, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Akshansh Ankit, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 20-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 19.07.2024, passed by the learned Additional District & Sessions Judge-VI-cum-Special Judge, POCSO Act, Samastipur, in Sessions Trial No.652 of 2019, R.N. 652 of 2019, arising out of Kalyanpur P.S. Case No.130 of 2018, whereby Respondent No.2 has been acquitted by the learned Trial Court from the charge of Sections 363, 366(A) & 376 of Indian Penal Code and Section 4 of the



POCSO Act.

2. Vide order dated 18.11.2024, trial court records was called for, which was received on 24.12.2024.

3. The prosecution case, in brief, is that on 19.08.2018 at 02:00 A.M., when the informant was sleeping with his family members, he was called by someone, then he came out of his house and saw Ram Bali Mahto (Respondent No.2), Shyam Bali Mahto, Preetam Mahto, Deepak Mahto, Arvind Kumar Mahto along with 5 to 7 unknown people armed with pistol. They entered inside the house of the informant and forcibly abducted his 17 years old daughter and threatened him that if he will lodge the case against them, they will kill his family members. It is further alleged that on the next morning, the informant along with ten villagers went to the house of Ram Bali Mahto seeking to return his daughter, where Preetam Mahto, Ghuran Mahto, Lalita Devi, Krishna Devi all had abused, attempted to assault and threatened to kill the informant.

4. On the basis of written complaint of the informant, Kalyanpur P.S. Case No.130 of 2018 was instituted under Sections 363, 366(A)/34 of the I.P.C. and respondent no.2 was charged under Section 376 of the I.P.C. and under Section 4 of the POCSO Act and then investigation was taken up by the



police. The police, after investigation, submitted charge-sheet against Respondent No.2 and, accordingly, cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against respondent No.2 to which he pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution has examined altogether nine witnesses, i.e., PW-1 Keshari Kumar Mehta, PW-2 Jitendra Kumar, PW-3 Praveen Kumar, PW-4 Sushil Kumar, PW-5 Sita Kumari, PW-6 Sapna Mehta, PW-7 Dr. A.V. Sahay, PW-8 Ashutosh Kumar Sharma and PW-9 Dr. Rehana Khatoon. The prosecution has also produced certain documents which are marked as Exhibits: Ext. P1-signature of informant on the written complaint, Ext. P2- signature of Jitendra Kumar on the seizure-list, Ext. P2/1-signature of Praveen Kumar on the seizure-list, Ext. P3- signature of the victim on her statement under Section 164 of the Cr.P.C., Ext. P4- signature of the victim on the medical requisition, Ext. P5- signature of the doctor on the medical report, Ext. P6- signature of the SHO on the FIR, Ext. P7 & P8- signature of the SHO on the formal FIR and the charge-sheet. The defence has also produced certain Exhibits: Ext. A to D- the age certificate of the victim issued by the Bihar Board, Ext. E- Bhartiya Airtel Limited, Airtel Prepaid



Namankan Form, Common Application Form (CAF-2018), Ext. G- Enrollment (Namankan) Receipt, Ext. H- School receipt, Ext. I- Bank Pass-book, Ext. X- Xerox Copy of message details and Ext. X/1- Xerox copy of flight ticket. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the respondent No.2.

6. It has been submitted by the learned counsel for the appellant that the learned trial court has failed to appreciate the fact that the victim is a minor as her age on the date of occurrence as per the provisional certificate of Matriculation (wherein her date of birth is mentioned as 25.09.2001) was 16 years 10 months and 25 days, and that her consent is not recognized in view of the provision of the POCSO Act. He further submits that the learned trial court has failed to consider the fact that the victim in her deposition had stated that she had made her statement under Section 164 of the Cr.P.C. under coercion and fear of the accused persons.

7. We have heard learned counsel for the appellant and have also gone through the records of the case.

8. The sole question that requires consideration by this



Court is whether the impugned judgment of acquittal requires any interference by this Court.

9. Upon consideration of the evidence on record, it is evident that the prosecution has framed charges against the accused under Sections 363, 366A, and 376 of the Indian Penal Code as well as under Section 4 of the POCSO Act.

10. The occurrence is alleged to have taken place on 19.08.2018, while the FIR was lodged on 21.08.2018, showing an admitted delay of two days. Although delay in lodging the FIR is not always fatal, the prosecution bears the duty to satisfactorily explain such delay. At this juncture, it is noteworthy, that the Hon'ble Supreme Court while deciding the case of *Thulia Kali vs. The State of Tamil Nadu* reported in *AIR 1973 SC 501*, it was observed that:

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information



report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation, It is therefore, essential that the delay in lodging of the first information report should be satisfactorily explained.

When an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles from the place of occurrence it is unsafe to base conviction upon the evidence."

11. In the present case, no explanation has been offered, thereby casting doubt on the genuineness of the prosecution's case.

12. As per the FIR, the allegation of abduction is that the victim was taken away at 02:00 A.M. in the night. However, the prosecution has not clarified how the accused was identified at that odd hour in circumstances of limited visibility. This unexplained aspect creates a serious doubt regarding the credibility of the version put forth.

13. The medical evidence further reveals that the victim's age was assessed between 17 and 18 years, which indicates that she was almost on the verge of attaining majority.

14. Most significantly, the statement of the victim recorded under Section 164 of the Cr.P.C. completely negates



the prosecution's case. In her voluntary statement, the victim categorically admitted that she had accompanied the accused of her own free will for the purpose of securing admission in a Medical College without informing her parents. She further clarified that the case had been falsely instituted by her father and that no act of sexual or physical assault was committed upon her.

15. The statement under Section 164 of the Cr.P.C. also finds corroboration from the defence of the accused recorded under Section 313 of the Cr.P.C., wherein he denied the allegations levelled against him. Taken together, both statements indicate that the victim had voluntarily left her home with the accused.

16. However, during the course of trial, the victim resiled from her earlier stand and deposed that her statement under Section 164 of the Cr.P.C. was made under the pressure and influence of the accused.

17. It is a settled principle of law that a statement recorded under Section 164 of the Cr.P.C. is not substantive evidence but can be used either to corroborate or to contradict the testimony given in Court. When there exists a material inconsistency between the statement under Section 164 of the



Cr.P.C. and the deposition at trial, the Court must scrutinize both versions with caution and seek corroboration from other reliable material. In the absence of such corroboration, improvements or contradictions in the testimony of the prosecutrix create serious doubt about the veracity of the prosecution case. At this juncture, it becomes essential to point out that *in New Criminal Major Acts, (14th ed., 2025), Justice Khastgir* notes that:

“Statement recorded under section 164 constitutes substantial evidence- George v State of Kerala AIR 1998 SC1376. It is a fundamental rule of criminal jurisprudence that a statement of a witness recorded under sec. 164 Cr.PC., cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him.

The object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under section 164. A proposition to the effect that if a statement of a witness is recorded under sc. 164, his evidence in court should be discarded, is not at all warranted- Jogendra Nahak v State of Orissa AIR 1999 SC 2565.”

18. Further, the allegation that a video was prepared and circulated by the accused also remains wholly unsubstantiated, as no such material has been produced on record by the prosecution.



19. In addition, the conduct of the victim herself appears doubtful. Having initially asserted before the Magistrate that she had gone voluntarily with the accused and that no offence was committed, she later changed her version during trial, alleging coercion in her earlier statement. Such inconsistent behaviour, coupled with the absence of any independent corroboration, makes her testimony unreliable and incapable of forming the sole basis of conviction. At this juncture, it is pertinent to note that in *Ganesan v. State reported in (2020) 10 SCC 573*, the Hon'ble Supreme Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may by itself be sufficient to sustain the conviction of the accused. Further, in *Rai Sandeep v. State (NCT of Delhi) reported in (2012) 8 SCC 21*, the Court, upon finding totally conflicting versions of the prosecutrix i.e. one in the complaint and another in her deposition before the Court, it was held that such material inconsistencies render her testimony unreliable. The Court further observed that in such circumstances the prosecutrix cannot be regarded as a "sterling witness," and consequently reversed the conviction, and observed as under:

"22. In our considered opinion, the "sterling witness" should be of a very high quality and



calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the



offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

20. In ***Krishan Kumar Malik v. State of Haryana*** reported in **(2011) 7 SCC 130**, the Hon’ble Supreme Court reiterated that although the solitary testimony of the victim in cases of sexual offences is ordinarily sufficient to convict the accused, such conviction cannot be sustained if the testimony of the prosecutrix is found unreliable or suffers from material flaws and lacunae. The Court thus held:

“31. *No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and*



appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

21. In the present case, when the victim herself does not support the allegation of abduction or sexual assault and no independent corroborative material has been adduced, it would not be safe for this Court to base conviction solely upon the FIR lodged by the father, particularly when the victim has consistently disowned those allegations at crucial stages of the proceedings.

22. We find that the findings recorded by the learned



Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

23. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or



condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

24. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581*** in paragraph 8, the Hon'ble Supreme Court, has held as under:

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by High Court while deciding an appeal against acquittal



under Section 378 of Code of Criminal Procedure, 1973 (for short “Cr.PC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:

“8.1.The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

25. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible.



It is because the Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

26. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

27. Accordingly, the present appeal stands dismissed.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Gaurav Kumar/-

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