

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.15 of 2016

Arising Out of PS. Case No.-63 Year-2009 Thana- TURKAULIYA District- East Champaran

Md. Nasib Ali @ Nasim Alam S/o Shek Adalat, Resident of village- Shankar Saraiya Tola Munsii Inar, P.S.- Turkaulia, District- East Champaran at Motihari

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Binay Kumar, Advocate
For the Respondent/s : Mrs. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 13-05-2026

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

2. This memo of appeal has been filed challenging the judgment of conviction dated 04.12.2015 and order of sentence dated 08.12.2015 passed by the learned Additional District and Sessions Judge-VIII, East Champaran, Motihari in Sessions Trial No. 101 of 2010 arising out of Turkaulia P.S. Case No. 63 of 2009 whereby and whereunder appellant was held guilty for the offences under Sections 361/363 of the Indian Penal Code and accordingly, learned Trial Court convicted appellant and sentenced him to undergo imprisonment for seven years for the offence under Section 363 IPC and to pay a fine of Rs. 2,000/- in default whereof, he was further sentenced to undergo rigorous



imprisonment of four months.

3. The prosecution case, in brief, is that on 06.04.2009 at about 9 AM, co-accused Mohammad Salim, who used to give tuition to grand-daughter of the informant, took her to school but she did not return by 4 PM. Informant went to the house of co-accused Mohammad Salim several times to inquire about it but his family members kept saying that she would return soon. Informant alleges that co-accused Md. Salim along with this appellant kidnapped his grand-daughter on a motorcycle bearing registration no. BR05D9171 for the purpose of human trafficking.

4. During investigation, victim was recovered and in her statement, recorded under Section 164 Cr.P.C. (Exhibit-A) on 17.08.2013, before the Judicial Magistrate, who stated that she was in love with Md. Salim and voluntarily ran off with him. She stated her age to be about 23 years and no one had kidnapped her.

5. During trial, the prosecution has examined as may as nine witnesses out of whom, P.W. 1 to P.W. 4 claimed to be eye-witnesses of the occurrence. P.W. 5, P.W. 6, P.W. 7, who is mother of the victim and P.W. 8 are hearsay witnesses. P.W. 9 is the informant who supported the prosecution case and stated



that on returning home he learnt that the accused Md. Salim and this appellant had taken away his granddaughter on a motorcycle. The victim and the Investigating Officer have not been examined by the prosecution during trial and therefore, the Court is bereft of all objective evidence, which would have been required to prove the place of occurrence as well as manner of occurrence.

6. On the other hand, defence relied upon Exhibit A and submitted that the victim was major at the time of occurrence and was a consenting party.

7. In this case, the victim, who is alleged to have been kidnapped by the accused persons was neither examined by the prosecution nor supported the prosecution case in her statement recorded under Section 164 Cr.P.C. (Exhibit A). Investigating Officer who investigated the case has also not been examined. Thus, in absence of these two vital pieces of evidence, this Court finds it unsafe to rely on the evidences of other witnesses.

8. In the result, the impugned judgment of conviction dated 04.12.2015 and order of sentence dated 08.12.2015 passed by the learned Additional District and Sessions Judge-VIII, East Champaran, Motihari in Sessions Trial No. 101 of 2010 arising out of Turkaulia P.S. Case No. 63 of 2009 are hereby set aside



with respect to the appellant.

9. Appellant, above named, is acquitted of all the charges and is discharged from the liability of the bail bond in connection with this case.

10. Accordingly, this appeal stands allowed.

11. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

Navya/-

AFR/NAFR	NAFR
CAV DATE	N/A
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