

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.38 of 2014

Arising Out of PS. Case No.-27 Year-2012 Thana- DUMRAO District- Buxar

Shyam Jee Mishra @ Manindra Mishra, Son Of Dina Nath Mishra, Resident
Of Village- Baijnath, P.S.- Ramgarh, District- Kaimur Bhabhua

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Sumeet Kumar Singh, Amicus Curiae Ms. Deepali Singh, Advocate Mr. Amarendra Kumar, Advocate Mr. Kumar Vikram, Advocate Mr. Anmol Kumar, Advocate
For the State	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 10-02-2026

The instant criminal appeal has been preferred by the appellant, Shyam Jee Mishra @ Manindra Mishra, against the judgment of conviction dated 09.12.2013 and the order of sentence dated 11.12.2013 passed in Sessions Trial Case No. 94/2012 by the Court of the Additional District and Sessions Judge-II, Buxar, whereby and whereunder the appellant has been convicted of the offence under Section 376 of the Indian Penal Code (in short, 'IPC') and sentenced to undergo rigorous imprisonment for seven years along with a fine of Rs. 1,000/-. In default of payment of fine, he has been directed to undergo simple imprisonment for an additional period of one month.



Prosecution Story:-

2. The substance of the prosecution case is as follows:

As per the informant, who is the father of the victim, his daughter (hereinafter referred to as the “victim”, her name being withheld to conceal her identity) was studying in Class VI at St. Cambridge Higher Secondary School, Dumrao. Her date of birth is stated to be in April, 1999, and her class teacher was Shyam Jee Mishra (the appellant). The appellant had visited his house on one or two occasions prior to the alleged occurrence. On 22.01.2012, his daughter (the victim) went missing, whereafter he and his family members started searching for her. During the course of the search, they came to learn that his daughter had been taken away by the appellant. It is alleged that the appellant had hatched a plan and, in furtherance thereof, allured the victim and took her away. The informant further alleged that despite extensive efforts, when his daughter could not be traced and the appellant was also not found, the appellant’s contact number was obtained from the victim’s school. Attempts were made to contact him on the said mobile number, but his phone was found switched off. It is further alleged that since the disappearance of the victim, the appellant had not been attending the school. In view of these circumstances,



the informant became convinced that his minor daughter had been kidnapped by the appellant.

3. The informant filed a written report (Exhibit-1) on 01.02.2012 setting out the aforesaid prosecution case, on the basis of which a formal FIR bearing Dumrao P.S. Case No. 27/2012 was registered for the offence under Section 366(A) of the IPC. Consequently, the criminal law was set in motion and investigation was taken up.

4. After completion of the investigation, the police submitted a charge-sheet against the appellant for the alleged offences. Thereafter, the learned Chief Judicial Magistrate took cognizance of the offences under Sections 366(A) and 376 of the IPC and committed the case to the Court of Sessions for trial.

5. The appellant was charged with the offences under Sections 366(A) and 376 of the IPC. The charges were read over and explained to him in Hindi, to which he pleaded not guilty and claimed to be tried.

6. During the trial in ocular evidence the prosecution examined altogether ten witnesses who are as under:-

Sl. No.	Name	Relevancy
PW-1	xxxxxx	The brother of the victim
PW-2	xxxxxx	The cousin brother of the informant
PW-3	xxxxxx	An uncle of the victim
PW-4	xxxxxx	The father of the victim and the Informant
PW-5	xxxxxx	The mother of the victim



PW-6	Dr. Bharti Dwivedi	Doctor who examined the victim and prepared medical report
PW-7	xxxxx	The victim herself
PW-8	Chedi Ram	Judicial Magistrate who recorded the victim's statement under Section 164 of Cr.P.C.
PW-9	Rama Shankar Singh	The investigating officer
PW-10	Dr. Anil Kumar Singh	The doctor who examined the victim medically and prepared the X-Ray report

7. In documentary evidence, the prosecution proved and exhibited the following documents:-

Sl. No.	Relevancy
Ext.-1	The Fardbeyan of the informant
Ext.-2	A signature of PW-10 on X-Ray report
Ext.-3	A signature of PW-6 on Medical report
Ext.-3/1	A signature of PW-10 on Medical Board's opinion
Ext.-4	A signature on the statement of victim
Ext.-5	The statement recorded by victim under Section 164 of Cr.P.C written and signed by PW-8
Ext.-6	An application of FIR No. 27/12 identified by the I.O. (PW-9)
Ext.-7	The formal FIR
Ext.-8	The chargesheet

8. After completion of the prosecution evidence, the statement of the appellant was recorded by the trial court under Section 313 of the Cr.P.C., wherein he denied the incriminating circumstances appearing against him in the prosecution evidence and claimed himself to be innocent. However, he did not take any specific defence in the said statement.

9. The appellant did not give any evidence in his defence.



10. While convicting the appellant, the trial court observed that the victim stated in her evidence that she had been taken by the appellant to Pune and Bokaro and that, at Bokaro, she was kept in a hotel. However, in the same concluding paragraph, the trial court mentioned that the Investigating Officer had not investigated any of the hotels where the victim was allegedly kept by the appellant. In the same paragraph, the learned trial court relied upon the prosecution's case, observing that since the victim was a minor girl, there was no reason for her to make a false allegation against the appellant. The trial court further placed reliance upon the opinion of the Medical Board, wherein it was mentioned that signs of sexual intercourse cannot be ruled out. The learned trial court concluded that there was no reason for the prosecution to falsely implicate the appellant and that no evidence to that effect had been adduced by the defence.

Submissions made by learned Amicus Curiae:-

11. Mr. Sumeet Kumar Singh, learned Amicus Curiae, submits that, as per the prosecution, the victim was recovered on 19.02.2012 and thereafter produced before the Judicial Magistrate on 21.02.2012 for recording her statement under Section 164 of the Cr.P.C but before recording of the said statement, the victim remained under the influence and in the custody of her parents



and, therefore, there was a possibility of her being tutored by them. Learned Amicus Curiae further submits that the victim made contradictory statements, particularly with regard to the presence of the appellant and his father at the time when she was being dropped near the police station. Before the Judicial Magistrate, the victim stated that from Mohaniya she was brought in a private car by two persons, namely, Baru Singh and Shankar Acharya, and after some time of travelling she was shifted to a Bolero vehicle and taken a little ahead of Naya Bhojpur Police Station, with a police van following behind. Thereafter, she was made to sit in the police vehicle, whereafter the said persons fled away. In the said statement, while describing her last company with Baru Singh and Shankar Acharya, the victim did not mention the presence of the appellant or his father. However, before the trial court, she deposed that at that time the appellant and his father were also present in the vehicle. In view of the aforesaid contradiction, learned Amicus Curiae submits that the victim does not appear to be a witness of high quality, as she did not remain consistent with the prosecution story. Placing reliance upon the observations made by the Hon'ble Apex Court in *Rai Sandeep alias Deepu vs. State (NCT of Delhi)*, reported in *(2012) 8 SCC 21*, it is contended that the informant's daughter (victim) does not qualify as a sterling witness. In support



of this submission, reliance has also been placed upon the judgment of the Hon'ble Apex Court in ***Santosh Prasad alias Santosh Kumar vs. State of Bihar***, reported in ***(2020) 3 SCC 443***, wherein the observations made in ***Rai Sandeep (supra)*** were followed. It has been further submitted by learned Amicus Curiae that, as per the victim, she was taken by the appellant to different places and kept in hotels at Bokaro and Mohaniya, but the Investigating Officer did not investigate any of those hotels, despite the fact that at least one of them was accessible to him. Thus, regarding the alleged incidents happened from the time of the victim's disappearance till her recovery, the Investigating Officer made no attempt to verify the alleged events. As such, the investigation conducted by PW-9 remained wholly unsatisfactory and tainted. What effect would be of such faulty investigation upon the case of prosecution, learned Amicus Curiae has placed reliance upon the judgment of the Hon'ble Apex Court in ***Parminder Kaur alias P.P. Kaur alias Soni vs. State of Punjab***, reported in ***(2020) 8 SCC 811***. The relevant paragraph No. 15 upon which reliance has been placed, is reproduced hereunder:

“ 15. The spot map prepared by PW 3 also has glaring omissions. The location of Bhan Singh's house and the place where the appellant allegedly threatened the prosecutrix on 24-2-1996 are not even marked. Letters which the prosecutrix alleged in her



examination-in-chief and police complaint that the appellant got written from her, have not been produced during trial. These could have shed light on the relationship between the accused, the prosecutrix and the male tenant prior to the incident. It is the duty of the prosecution to lead the best evidence in its possession, and failure to do so ought to lead to an adverse inference. [*Mussaiddin Ahmed v. State of Assam*, (2009) 14 SCC 541, paras 11-15 : (2010) 1 SCC (Cri) 1445]”

11.1. It is also submitted by learned Amicus Curiae that, as per the prosecution case, the victim went missing from her house on 22.01.2012, which came to the knowledge of her father on the next morning. Thereafter, he made efforts to search for the victim and went to the school of the appellant, where he came to know about the appellant’s absence. On that basis, he developed suspicion regarding the role of the appellant in the disappearance of the victim. It is further submitted that this prosecution version clearly indicates that the appellant was only suspected by the victim’s father at an early stage. It has further come in the evidence of the informant that the appellant’s family was residing in the same town of the informant, yet he did not take any steps to visit the appellant’s family members to ascertain the whereabouts of the appellant. It is further submitted that even after two or three days, when the informant became aware of the appellant’s alleged



role in the disappearance of his daughter, he remained silent for several days and ultimately lodged the FIR after a delay of nine days from the date of disappearance, which remained unexplained. Learned Amicus Curiae submits that it is a settled position of law that delay in lodging the First Information Report results in embellishment and exaggeration and creates the possibility of introduction of a coloured version. In support of this submission, reliance has been placed upon the judgment of the Hon'ble Apex Court in ***State of Andhra Pradesh vs. M. Madhusudhan Rao***, reported in ***(2008) 15 SCC 582***, whereof the relevant paragraph No. 30, upon which reliance has been placed, is reproduced hereunder:

“ 30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”



Submissions made by learned Addl. Public

Prosecutor:-

12. On the other hand, Mr. Bipin Kumar, learned Additional Public Prosecutor for the State, submits that the appellant has failed to show any reason on the part of the informant to falsely implicate him in a case of rape and kidnapping with the help of his minor daughter. He contends that from the evidence of the informant as well as other family members of the informant, who were examined by the prosecution before the trial court, the reasons for the delay in initiating legal action against the appellant have been satisfactorily explained. It is further submitted that the informant belongs to a respectable family and had initially made efforts to search for the victim, and only when he failed to trace his daughter then he approached the police station and filed a written report. In such types of occurrences, some delay in lodging the FIR normally occurs. Learned Additional Public Prosecutor further submits that the victim remained consistent in her version, as is evident from a comparison of her statement recorded before the Judicial Magistrate under Section 164 of the Cr.P.C. and her testimony before the trial court. From the inception of the occurrence till the culmination of events, the prosecution case stands fully established through the victim's evidence, as she was



the solitary witness to the said events. It is further submitted that although the Investigating Officer did not investigate the locations or hotels where the victim was allegedly taken and kept by the appellant, the same is not fatal to the prosecution, as such lapse was attributable to the Investigating Officer. Moreover, the Investigating Officer was not cross-examined on this aspect, and during cross-examination, the victim remained firm and consistent in her allegations regarding being taken by the appellant to the said places and being kept there by him. Thus, the lapses in investigation are not fatal to the prosecution case. It is lastly submitted that the most material witness of the prosecution, the victim herself, is a sterling witness, and therefore, the conviction of the appellant for the alleged offence is proper and sustainable in the eye of law, as victim's evidence is wholly reliable and trustworthy.

Consideration and Analysis:-

13. I have heard both sides, perused the evidence adduced by the prosecution, and also taken into consideration the statement of the appellant as well as the findings recorded by the trial court in the impugned judgment. As per the prosecution case, the victim went missing on 22.01.2012 and on the very next morning her parents came to know about her disappearance. Thereafter, the victim's father went to her school to verify her



presence and, upon finding that she was not there and that the appellant was also absent, he suspected the appellant of having taken the victim away. At the time of registration of the FIR by the victim's father, the allegations were based only on suspicion. So far as the delay of nine days in lodging the FIR is concerned, the same has remained unexplained for the major part of the period. Although some justifiable explanation appears to exist for the first two days, no explanation has been furnished for the remaining period of about seven days. The informant did not offer any explanation for this delay either in the FIR or during his evidence before the trial court. In view of the principles laid down by the Hon'ble Apex Court, such inordinate and unexplained delay goes against the prosecution and casts a serious doubt on its allegations. In this regard, the observations made by the Hon'ble Apex Court in ***M. Madhusudan Rao (supra)***, as discussed hereinabove, are relevant.

13.1. Now, I come to the veracity of the victim's evidence. In cases of rape or kidnapping of a minor girl, the victim herself is considered the most important witness, particularly with regard to allegations attracting such offences when they are stated to have been committed at isolated places. As per the victim's statement recorded before the Judicial Magistrate, which was proved by the prosecution as Exhibit-5, she stated that she was



first taken to Dumraon Station, from where she was taken to Buxar, and thereafter to Pune, Maharashtra, by train, where she stayed only during the daytime. She further stated that she returned to Tatanagar by train and from there was taken by the appellant to Bokaro, where she was kept in a hotel for about 12–13 days. During that period, the appellant allegedly established sexual relations with her on 5–6 occasions, and although she resisted, the appellant caught hold of her hands and legs while committing the alleged sexual offence. Similar evidence was given by the victim before the trial court. The victim was recovered on 19.02.2012 and on the next day, i.e., 20.02.2012, she was medically examined. However, no injury or sign on her person suggestive of forcible sexual intercourse was found by the Medical Board. It is important to mention here that from the date of her recovery till her production before the Judicial Magistrate by the police, the victim remained in the custody of her parents and, therefore, the possibility of influence or tutoring during that period cannot be ruled out. So far as the other parts of the events disclosed by the victim before the trial court and in her statement recorded under Section 164 of the Cr.P.C. are concerned, certain material contradictions emerge. Firstly, before the Judicial Magistrate, the victim stated that from Mohaniya she was taken by two persons,



namely, Baru Singh and Shankar Acharya, in a car, and after some distance she was shifted to a Bolero vehicle and thereafter taken towards Naya Bhojpur Police Station. In this part of the incident, the victim did not state anything about the presence of the appellant or his father. However, before the trial court, she deposed that during this part of the occurrence, the appellant and his father were also present along with Baru Singh and Shankar Acharya. Secondly, as per the victim's deposition before the trial court, the accused brought her near Naya Bhojpur Police Station and got her seated in a police vehicle which was present there. Such alleged conduct of the appellant does not appear to be probable. Moreover, the Investigating Officer has not stated anything regarding such conduct of the appellant or about the mode of recovery as disclosed by the victim herself. Further, in her statement recorded under Section 164 of the Cr.P.C. before the Judicial Magistrate, the victim stated that she was brought near Naya Bhojpur Police Station where a police vehicle was already parked and that the accused made her sit in the police vehicle and thereafter fled away. However, before the trial court, she deposed that the police vehicle came from behind. With regard to the place of recovery, the Investigating Officer deposed that the victim was recovered from Naya Bhojpur Chowk. Thus, the manner of recovery as stated by



the victim does not find corroboration from the evidence of the Investigating Officer. In view of these contradictions, the victim does not appear to be a sterling witness of very high quality. In such circumstances, the main parts of the incidents as disclosed by the victim ought to have been properly investigated by the Investigating Officer, such as her alleged movement from Dumraon to Buxar, thereafter to Pune, Maharashtra, by train, then back to Tatanagar by train, from where she was taken to Bokaro by bus, and thereafter to Mohaniya, where she was allegedly kept in hotels by the appellant. With regard to these places of stay of the victim with the appellant, the Investigating Officer could have easily verified the same, but no effort in that regard was made. Further, with respect to the alleged involvement of the appellant's father, brother and brother's wife, as well as two persons, namely, Baru Singh and Shankar Acharya, in facilitating the victim's stay and in taking her from Mohaniya, no investigation whatsoever was conducted by the Investigating Officer.

Conclusion:-

14. In these circumstances, I find that there is no corroborative evidence to support certain parts of the alleged occurrence. It would, therefore, not be safe for upholding the



conviction of the appellant solely on the basis of the victim's testimony in the absence of corroboration of the ancillary incidents emerging from her evidence. Moreover, the trial court, in the concluding portion of the impugned judgment, has not assigned any cogent or convincing reasons for arriving at the conclusion of conviction, and the reasons recorded are wholly unacceptable. In my considered opinion, the appellant is entitled to the benefit of doubt. Accordingly, the judgment of conviction dated 09.12.2013 passed by the Court of the Additional District and Sessions Judge-II, Buxar, in Sessions Trial No. 94 of 2012, convicting the appellant for the offence punishable under Section 376 of the IPC, and the order of sentence dated 11.12.2013 passed therein, are not sustainable in the eye of law. Both are, therefore, set aside and the instant appeal is allowed.

15. As the appellant has already undergone the entire sentence of imprisonment awarded to him in connection with this matter, no direction for his release is required.

16. Let the records of the trial court, along with a copy of this judgment, be sent forthwith to the court concerned for compliance and for doing the needful.

17. Mr. Sumeet Kumar Singh, learned *Amicus Curiae*, shall be entitled to remuneration in terms of the Notification dated



18.05.2017 issued by the State Government. The said remuneration shall be paid by the Patna High Court Legal Services Committee for assisting this Court as *Amicus Curiae*.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
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