

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1145 of 2023**

Arising Out of PS. Case No.-153 Year-2021 Thana- DORIGANJ District- Saran

XX (Mother of the victim), C/o [REDACTED] R/O Village- Chirand,
P.S.- Doriganj, Dist.- Saran.

... .. Appellant

Versus

1. The State of Bihar
2. Abhishek Kumar, Son of Ratan Saroj, R/O Village- Malviya Nagar, P.S.- Lanka, Dist.- Varanasi.
3. Bittu Kumar @ Satyam Rai, Son of Lalan Gupta, R/O Village- Bhairampur Nizamat, P.S.- Doriganj, Dist.- Saran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ram Binod Singh, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 18-03-2026

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

2. The present appeal has been preferred for setting aside the judgment of acquittal dated 01.04.2023 (hereinafter referred to as the ‘impugned judgment’) passed by the learned 1st Additional Sessions Judge, Saran at Chapra (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 51 of 2022 arising out of Doriganj P.S. Case No. 153 of 2021. By the impugned judgment, the respondent nos. 2 and 3 have been acquitted of the



charges punishable under Sections 363, 366A and 376D of the Indian Penal Code (in short 'IPC').

Prosecution Case

3. The prosecution case is based on the written application of the informant/ appellant (PW-6). In her written application, she has stated that on 07.07.2021 at 05:00 AM, her daughter aged 19 years went for a walk. When her daughter did not return even after a long time, the family members started looking for her. In course of search, she came to know that the accused, namely, (1) Abhishek Kumar (respondent no. 2), (2) Navin Kumar, (3) Bittu Kumar (respondent no. 3) and (4) Rohit Kumar, had taken away her daughter (hereinafter called as 'victim' or 'Ms.B') by alluring her. The informant has firm belief that all these accused persons kidnapped her daughter for any untoward incident.

4. On the basis of this written application, Doriganj P.S. Case No. 153 of 2021 dated 09.07.2021 was registered under Sections 363/366(A) of the IPC against accused persons, namely, (1) Abhishek Kumar (respondent no. 2), (2) Navin Kumar, (3) Bittu Kumar (respondent no. 3) and (4) Rohit. After investigation police submitted chargesheet being Chargesheet No. 294 of 2021 dated 18.12.2021 against accused, namely, Abhishek Kumar



(respondent no. 2) and Bittu Kumar (respondent no. 3) under Section 363, 366(A) IPC keeping investigation pending against accused Navin Kumar and Rohiti Kumar Dilip Kumar.

5. Learned Chief Judicial Magistrate vide order dated 23.12.2021 took cognizance of the offences punishable under Sections 363, 366(A) IPC against respondent nos. 2 and 3.

6. Charges were read over and explained to respondent nos. 2 and 3 in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 03.03.2022, charges were framed against respondent nos. 2 and 3 under Sections 363/34, 366(A)/34 and 376(D) IPC.

7. In course of trial, the prosecution examined as many as eight witnesses and exhibited several documentary evidences. The names of the prosecution witnesses and the exhibits are being shown hereunder in a tabular form:-

List of Prosecution Witnesses

PW-1	Shailesh Kumar Singh
PW-2	Bhanu Pratap Singh
PW-3	Manoranjan Kumar Singh
PW-4	Father of the Victim
PW-5	Victim
PW-6	Mother of the Victim/ Informant
PW-7	John Marandi
PW-8	Dr. Bushra Salim



List of Exhibits on behalf of the Prosecution

Exhibit ‘P-1/PW-5’	164 CrPC Statement of PW-5
Exhibit ‘P-2/PW-6’	Signature of the Informant (PW-6) on the written application
Exhibit ‘P-3/PW-7’	Endorsement on the written application made by the SHO of Doriganj
Exhibit ‘P-4/PW-7’	Formal FIR
Exhibit ‘P-5/PW-7’	Chargesheet
Exhibit ‘P-6/PW-8’	Medial Examination Report

8. Thereafter, the statements of respondent nos. 2 and 3 were recorded under Section 313 of the CrPC. The respondent no. 2, namely, Abhishek Kumar, in his 313 CrPC statement stated that the victim (PW-5) and he were in a relationship. They both have solemnised marriage in Markandey Mahadev Temple. Lanka Police Station released PW-5 in his favour and in favour of his family. They also registered their marriage in Varanasi Court. The respondent no. 3, namely, Bittu Kumar @ Satyam Rai denied the allegations and pleaded innocence.

9. The defence has also examined several witnesses and produced documentary evidences which are given hereunder in tabular form:-

List of Defence Witnesses

DW-1	Jyoti Kumari
DW-2	Ratan Saroj
DW-3	Mahesh Pandey



List of Exhibits on behalf of the Defence

Exhibit A D-31	marriage certificate
Exhibit B D-32	matriculation certificate of victim
Exhibit C D-33	Aadhar card of victim
Exhibit ‘D-1/DW-1’ to ‘D-27/DW-1’	Photographs.
Exhibit ‘D-28/DW-1’	Receipt of digital studio
Exhibit ‘D-29/DW-1’	Pen drive
Exhibit ‘D-30/DW-1’	Signature of respondent no. 2 on true copy of Supurdignama
Exhibit ‘D-34/ DW-2’	Signature of Sajan Giri on marriage certificate
Exhibit ‘D-35/DW-2’	Signature of witness on marriage certificate
Exhibit ‘D-36/DW-2’	Photo of respondent no.2 and the victim on marriage certificate
Exhibit D-37	Certified copy of order dated 21.12.2021 in CWJC No. 1009 of 2021
Exhibit ‘D-38/DW-1’	Signature of witness on certificate

Findings of the Learned Trial Court

10. Learned trial court after analysing all the evidences available on the record found that PW-5 and respondent no. 2 both were in a relationship and they solemnised marriage in the temple of Sri Markandeya Mahadev at Varanasi on 07.07.2021 and obtained marriage certificate issued by the Priest of this temple on the same day, Police of Lanka P.S., Varanasi released



PW-5 in favour of Respondent no. 2 and his parents on 08.07.2021.

11. Learned trial court further found that the marriage certificate has also been issued by the Government of Uttar Pradesh on 13.07.2021. PW-5 sought police protection against honour killing because of inter-caste marriage and she also filed Cr.WJC No. 1009 of 2021, in which respondent no. 2 was named as husband of PW-5, but later on Cr.WJC no. 1009 of 2021 got withdrawn by PW-5 under parental pressure. Learned trial court also found that there are different photographs and video clippings of their marriage on the record which makes it to believe it so.

12. Learned trial court after considering all the facts and circumstances of the case hold that the prosecution has failed to prove charges under Section 363, 366A and 376D IPC against respondent nos. 2 and 3 beyond all shadow of reasonable doubts. Accordingly, respondent nos. 2 and 3 have been acquitted of the charges.

Submissions on behalf of the appellant

13. Learned counsel for the appellant submits that the learned trial court passed the judgment of acquittal in a mechanical



manner without appreciating the facts and circumstances of the case and the evidence.

14. It was further submitted that the learned trial court erred in disbelieving the testimony of the victim (PW-6), who is reliable and trustworthy and duly corroborated by her statements recorded under Sections 164 and 161 CrPC. Her deposition has remained consistent throughout.

15. It was further submitted that the learned trial court has erred in appreciating that the prosecution has duly established the essential ingredients of offences under Sections 376D, 363, and 366A IPC against respondent nos. 2 and 3, along with the place and manner of occurrence.

16. It is further submitted that the learned trial court has erroneously placed complete reliance on the defence witnesses and exhibits without verifying their authenticity and without examining any expert or independent witnesses in support thereof. The entire defence story put forth by accused Abhishek Kumar appears to be falsely constructed, on the basis of which the credible testimonies of the prosecution witnesses have been unjustifiably disregarded.

17. It was further submitted that the learned trial court has failed and overlooked that the statement of the victim and



other prosecution witnesses are duly corroborated and consistent without any major contradictions.

Submissions on behalf of the State

18. On the other hand, learned Additional Public Prosecutor for the State has vehemently opposed the appeal. It is submitted that there cannot be a better case of false implication of a person invoking Section 376D and other allied sections of the IPC. The evidences available on the record have been duly examined by the learned trial court. On the face of the overwhelming materials showing that the victim (PW-5) is major and she had, on her own will and volition, solemnized marriage on 07.07.2021 in the temple of Markandey Mahadev, which have been duly proved vide Exhibit 'D-1/DW-1' to 'D-30/DW-1', the learned trial court came to a conclusion that the appellant and the victim both were adult. In the kind of materials present on the record, the learned trial court has rightly held that the prosecution had failed to prove the charges under Sections 363, 366A and 376D of IPC beyond all shadow of reasonable doubt.

Consideration

19. We have once again examined the entire evidences available on the record. According to the informant, who is the mother of the victim (PW-5), four accused persons forcefully



abducted her daughter on 07.07.2021 by pressing her mouth. She was told by her daughter that accused persons had committed gang rape on her. The defence suggested her that her daughter and A-1 had voluntarily solemnized their marriage in the temple of Markandey Mahadev at Varanasi on 07.07.2021. It was further suggested to the informant that she herself along with her husband went to the house of A-1 but her daughter refused to go with her and she was released in favour of the parents of A-1 by Lanka P.S. The informant denied the suggestions of the defence.

20. We find that in the trial court, Exhibit 'D-32', which is the original matriculation certificate of the victim (X), and Exhibit 'D-33', which is the original Aadhar card of victim (X), have been brought on record by the accused persons and these documents would go to show that the victim (X) was major on the date of occurrence. Her date of birth as recorded in the matriculation certificate is 15.02.2002.

21. We have further found that the case of the prosecution stands falsified on the face of Exhibit 'D-31' and 'D-36/DW-2' which are the original certificate of registration of marriage issued by the Marriage Officer, Government of Uttar Pradesh and Markandey Mahadev Temple respectively.



22. The learned trial court has recorded the vacillating stand of the informant (PW-6) as well as the victim (PW-5) in their deposition. It is a matter of record that the informant filed this case on 09.07.2021 even as she came to know on 07.07.2021 that the four accused persons forcefully abducted her daughter. The trial court found that there was overwriting in the handwritten petition given by PW-6 with respect to the date at the end of the application.

23. We have further noticed that the victim (PW-5) and the informant (PW-6) both have categorically stated in their examination-in-chief that the victim had been forcefully abducted by putting cloths on her mouth, but their statements to this effect get contradicted from the contents of the handwritten FIR in which the informant has stated that the accused persons abducted her daughter after allurement. The learned trial court has rightly held that there is a major contradiction as regards the manner of abduction of PW-5. The testimony of the informant (PW-6) has not been found wholly reliable and convincing for purpose of proving the guilt of the accused persons.

24. The learned trial court has found that the father of the victim, who has been examined as PW-4, is a hearsay witness. PW-4 expressed ignorance with respect to the whereabouts of



original Aadhar card of his daughter or that he went to Lanka P.S. on 08.07.2021 or that there was any affair between the victim and A-1 or that they got married and the marriage was solemnized at Markandey Mahadev Temple, Varanasi and it was registered before the Marriage Registrar at Varanasi. PW-4 also suppressed filing of Criminal Writ application before the Hon'ble High Court. After finding that the father of the victim was showing ignorance despite there being overwhelming materials on the record brought by the evidence, the learned trial court took a view that his evidence cannot be relied upon. We find no fault on the part of the learned trial court in appreciation of the evidences so far.

25. The learned trial court has further found that PW-1 supported the prosecution case in his examination-in-chief saying that he saw accused persons kidnapping PW-5 on 07.07.2021 at 5 o'clock in the morning. He further claimed that he was told by PW-5 that all four accused persons gang raped her in a room and made a video and threatened her to make it viral. PW-5 also claimed so in her examination-in-chief but neither such video of gang rape nor still photographs of the same has been brought on the record by the prosecution to support the charges framed against the accused persons. The learned trial court found that PW-1 is a



hearsay witness, his evidence is contradictory to the evidence of other witnesses, therefore, he cannot be relied upon.

26. PW-2 supported the prosecution case saying that when he went for morning walk on 07.07.2021 at 5 o'clock in the morning, he saw that PW-1 raised alarm that PW-5 had been abducted by four persons in a white vehicle. He came to know on inquiry that A-1 had come to the house of A-2 along with Naveen and Rohit. He has further stated that victim came to Chhapra Junction after two months and she told about gang rape with her. It is rightly noted by the learned trial court that from examination-in-chief of PW-1 and PW-2 it would appear that they had supported the prosecution case that PW-5 was abducted by three of his villagers and one stranger who was A-1 but surprisingly they did not inform this occurrence to PW-6 (the informant). Had this information been given by PW-1 and PW-2 to PW-6, she would have mentioned this fact in her application on the basis of which the present FIR has been lodged.

27. The learned trial court further found that PW-3 is a hearsay witness, his deposition is full of contradiction and cannot be relied upon. So far as the evidence of PW-7 John Marandi, who is the Investigating Officer of this case, is concerned, he has brought the different facets of his investigation on the record. He



has stated in his examination-in-chief that the place of occurrence of this incident is situated at a distance of about 700 meters towards west from Doriganj P.S. from where the victim has been abducted but he did not identify the room in which she was kept and accused persons gang raped her. From the testimony of the victim (PW-5) it was found that she was taken to Jodhpur from where she came to Chhapra. PW-7 has stated in his cross-examination that he recovered the victim from Durga Mandir, Chhapra and information was given to her family members but it may be found from the evidence of the victim (PW-5) that she claims to have called her father after her arrival at Chhapra Junction who informed it to police and brought her to the police station. The I.O. (PW-7) has admitted that he did not investigate solemnization of marriage of victim with A-1.

28. Dr. Bushra Salim (PW-8) is the Medical Officer who examined PW-5 on 30.09.2021. In her medical examination report (Exhibit 'P-6/PW-8'), she has not found any sign of injury over whole body and around private parts. She was of the opinion that the age of the victim is about 22 years and any evidence of recent sexual intercourse had not been found. In her cross-examination, she reiterated that no mark of violence on the body of the victim girl including private part had been found.



29. The learned trial court has found from the evidence of the victim (PW-5) that she claimed to have been kidnapped on 07.07.2021 at 5 o'clock by A-1, A-2, Naveen and Rohit. They took her to a room wherein she was locked and then she was subjected to rape by the four accused persons who also made her videos. She has stated that she had run away one day from Jodhpur and reached to railway station by auto rickshaw, she came to Kanpur and from Kanpur, she came to Chhapra Station from where she gave a call to her father who reached at the railway station along with police and took her to the police station. In her cross-examination, she claimed that her Aadhar card and other documents were lost. She also claimed that she never met A-1 as well as his family members and she did not marry A-1 at Markandey Mahadev Temple. The learned trial court has noted major contradictions in the evidence of PW-5 on account of which she cannot alone be relied upon for conviction of the accused persons.

30. On a close scrutiny of the evidences adduced by the prosecution witnesses, we find that the overwhelming evidences brought on the record by the defence would eclipse the prosecution case.



31. In this case, the defence has also adduced oral as well as documentary evidences. DW-1 is the younger sister of A-1. She has stated that marriage of A-1 was solemnized on 07.07.2021 in the temple of Markandey Mahadev. She photographed this marriage and also took still photographs from her Realme 5 phone and the same is saved in her phone. She has proved Exhibit 'D-1/DW-1' to 'D-30/DW-1' which are the photographs and the videos transferred from her mobile phone to the laptop of A-1 and also in the pen drive.

32. Ratan Saroj (DW-2) is the father of A-1 and he has stated in his examination-in-chief that marriage of his son and PW-5 got solemnized on 07.07.2021 in the temple of Markandey Mahadev, certificate was issued by the priest of this temple which has been brought on record by him. The photographs contained the photos of the couple and different documentary evidences. Exhibit 'D-34/DW-2' to 'D-36/DW-2' have been proved by this witness.

33. Mahesh Pandey (DW-3) has supported the defence case. He has stated in his examination-in-chief that he was posted as Incharge Inspector on 08.07.2021 at Lanka P.S. when victim and A-1 (respondent no.2) were brought to Chitaipur Chowki upon the complaint of her father. Parents of both were present there and it was told by victim that she had voluntarily solemnized marriage



with A-1 and she wanted to live with him. DW-3 has further stated that the victim refused to go with her parents and lastly her custody had been given to the parents of A-1 and general diary entry has been made by constable Dharmendra Kumar on his direction in which the name of the girl has been entered as Ms. B and the name of boy has been entered as A-1. He also identified *supurdginama* which has been marked Exhibit 'D-30'.

34. We have once again perused the entire evidences which have been discussed hereinabove and found that the present case is nothing but result of an afterthought and the victim (PW-5) seems to have undergone some parental pressure at a subsequent stage after two months of her marriage. No part of the judgment of the learned trial court suffers from any infirmity, much less any perversity. This Court finds no reason to interfere with this well-reasoned judgment of the learned trial court. Even otherwise, the principles governing an appeal against acquittal are very clear. Unless the appellate court comes to an irresistible conclusion that the accused is guilty of the offence charged, no interference would be required.

35. In result, we refuse to interfere with the impugned judgment of the learned trial court.



36. In fact, we are of the view that it is a fit case in which the informant-appellant should suffer cost for misusing the process of court by lodging a false and frivolous case and taking the same up to appeal before this Court causing further wastage of the judicial time of the Court, but at this stage, this Court is not imposing any cost of litigation.

37. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

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AFR/NAFR	
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