IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 1050 of 2017

Ajay Kumar Paswan @ Sajan Paswan @ Chhotu Paswan @ Ajay Paswan son of Bhubaneswar Paswan, resident of village Champanagar, Nawadih, P.O. and P.S.- Ichak District-Hazaribag .... Appellant

Versus

The State of Jharkhand ....Respondent

P R E S E N T
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant: Mr. Kumar Nishant, Advocate
For the State: Mrs.Priya Shrestha, Spl. P.P.

C.A.V. on 16.01.2026 **Pronounced on 21.09.2026**

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1. Heard Mr. Kumar Nishant, learned counsel appearing for the appellant/convict and Mrs. Priya Shrestha, learned Spl. P.P. appearing on behalf of the State.

2. The instant criminal appeal is directed against the judgment of conviction dated 03.04.2017 and order of sentence dated 04.04.2017 passed by learned Additional Sessions Judge-II, F.T.C, Bokaro in S.T. No. 09 of 2015 whereby and whereunder, the sole appellant has been convicted under Section 366 of IPC and sentenced to undergo R.I. for seven years and to pay fine of Rs. 5,000/- and in default of payment of fine, further directed to undergo Simple Imprisonment for six months.

3. In the present case, the F.I.R. being Balidih P.S. Case No.01/ 2014 dated 03.01.2014 and under Section 366 of IPC came into existence upon the written report of the father of the victim who has stated therein that he had given an application on 05.12.2013 regarding missing of his daughter (victim) since 04.12.2013 at about 2:30 p.m. and he made meticulous effort to search his daughter (victim) from his side, with the help of Police Station and his second

daughter Neetu Kumari got married with Ajay Kumar Paswan (appellant/convict) on 12th May, 2011. He further stated that his son-in-law (appellant/convict) left his second daughter at her maternal home on 10.12.2013 and by then they came across the fact that his son-in-law i.e. Ajay Paswan (appellant/convict) has taken away her his daughter (victim) and they also came to know that on 04.12.2013, the accused came at about 2:30 P.M near his house and while on way to tuition, the accused (appellant/convict) had enticed away his daughter (victim) and had taken on his motorcycle by saying that he would drop her at tuition classes.

4. After due investigation, the charge sheet was submitted against the appellant/convict under section 366 A of IPC on 16.11.2014. Thereafter, upon taking cognizance, matter was committed to the Court of Sessions where it was registered as S.T. Case No. 09/2015. Charge under Section 366 of IPC has been framed against the appellant/convict in the present case on 06.02.2015 and the same was read over and explained to the appellant/convict in Hindi, to which he pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined as many as 11 witnesses and also brought the documentary evidences on record. However, no oral evidence has been adduced by the defence. The statement of the appellant/convict under Section 313 Cr.P.C. was recorded on 18.03.2017, wherein he denied all the allegations levelled against him.

6. After appreciating the evidence on record, learned Trial Court found the accused guilty under Section 366 of IPC and sentenced him to undergo R.I. for seven years and to pay fine of Rs. 5,000/- and in default of payment of fine, directed to further undergo Simple Imprisonment for six

months. Being aggrieved by the above-said judgment, the appellant/convict has preferred the present appeal.

7. Learned counsel for the appellant/convict commenced his argument by contending that the only role attributed to the appellant/convict is that the victim had accompanied with him willingly on his motorcycle and nothing has been shown on behalf of the prosecution that the appellant/convict enticed or allured the victim for any act. He further submits that the victim allegedly lived with the appellant/convict for seven days prior to her visit for Patna, without raising any ruckus or alarm or any complaint to anyone, and thus her conduct casts a grave doubt on her version.

8. Learned Counsel further submitted that there is material contradiction in the evidence of the victim as she has resiled from her own testimony during her cross-examination and on behalf of the prosecution, no evidence has been brought on record to establish that she was forced into prostitution, rather she had stayed comfortably for long period in the said house at Patna, where she was alleged to be enticed/taken away by the appellant/convict. It is further pointed out that the radiological age as per the medical report of the victim was above 18 years and thus, the overall incident does not fall within the ambit of commission of an offence punishable under Section 366 of IPC especially, when the version of the victim itself is doubtful. Upon the above score, it is prayed that the appellant/convict deserves the benefit of doubt and therefore, may be acquitted.

9. Per Contra, learned Spl. P.P on behalf of the state submitted that in the present case all the ingredients of the offence punishable under Section 366 of IPC have been proved beyond reasonable doubt by the prosecution and the victim examined as P.W.-6 has stated about the role of the

appellant/convict as she was enticed and taken away from her hometown to Patna and forced into prostitution, which fully corroborates with the testimony of the parents of the victim. It is further submitted that the learned trial court has considered the evidences of the victim and her parents in terms of offence under section 366 of IPC and rightly convicted the accused. Therefore, no interference is required by this appellate court in the judgment of conviction and order of sentence.

10. Heard the learned counsel for the parties and perused the material on record.

11. To prove its case, the prosecution has examined as many as 11 witnesses and brought on record Ext.1- Medical Report of the victim, Ext.2-signature of the mother of the victim on the written report dated 03.01.2014, Ext.3-signature of mother of the victim on the requisition of Police for Medical examination of the victim, Ext.4- signature of the victim on the statement under section 164 of Cr.P.C., Ext.5- written report, Ext.6- statement of victim recorded under Section 164 Cr.P.C., Ext.7- statement of the victim under section 164 of Cr.P.C.

12. Victim has been examined in the present case as P.W.6, who has deposed in her testimony that on 04.12.2013 at 2:30 P.M. while she was going for tuition and she reached near Basuda factory, then her *Jijaji* (brother-in-law) Sajan Kumar Paswan (appellant/convict) came on his motorcycle and asked the victim to sit on his motorcycle, so that she would be dropped at tuition, but in the way he told her that she should meet her elder sister who is at Sector-11C and thus, she was taken to Sector-11C Quarter, where she did not find her sister, but the appellant/convict bolted the door from inside and extended threat that if the victim would shout then her

sister would be liquidated. The appellant/convict is the husband of victim's second eldest sister Neetu Kumari and by extending threat, she was taken to Patna on 11.12.2013 and she was kept at Hanuman Nagar, Patna where business of prostitution was carried out and the accused told the victim to got engaged in the prostitution and when she has refused, her hand was cut by the blade and the accused also extended threat that if she would make commotion or flee away, then her sister Neetu and she would be liquidated. She has also stated in her testimony that when she refused to get involved herself in the prostitution, then she was asked by the accused to call her mother and asked for Rs. 2,00,000/- and then, the victim called her mother and stated about the demand of Rs. 2,00,000/- and also divulged the address where she was staying and then, her parents and brother came and she was taken back to Bokaro.

13. She has further stated that her signature was taken on the blank paper and also on one marriage certificate by the accused at Patna. Therefore, returning from Patna, police took her to the doctor and she was medically examined and her statement was also recorded before the Magistrate and she read and put her signature on it and has identified the same which has been marked as Ext.4. On 30.05.2015, the accused extended threat to withdraw the case otherwise there would be bad consequences.

14. In her cross-examination, she has stated that on the day of incident, she went to the place of her second elder (*Manjhli*) sister, but she could not meet her. She also stated that there were three houses where she was taken to meet her sister on the day of the incident and one quarter was of the accused and she showed her ignorance regarding the occupation of other two houses. She categorically stated that she has been taken to Patna at

Hanuman Nagar and they stayed in the house of one Dilip and in the said house his wife and children also used to reside and she remained in the house of Dilip for two and half months and her parents took her back from that place. She has also stated that accused was not residing at that place rather he used to visit for a day or two. Further, it has been stated by the victim that when she visited Patna, the accused remained with her for two days at the house of Dilip and thereafter, he returned back.

15. In the present case, apart from victim, her two brothers, (P.W.2) and (P.W.4), her sister, who happens to be wife of the accused (P.W.5), victim's mother (P.W.3), victim's father (P.W.8) have been examined in the present case. These witnesses have stated in their respective testimony what they heard from the victim (P.W.-6) regarding allurement and enticing away by the accused, as such, they are hearsay witnesses. P.W.3 (mother) and P.W.8 (father) of the victim have stated in their respective testimonies that they went to Patna to bring their daughter back when they received message/call from her daughter (victim) regarding the place where she was staying at that time.

16. P.W.3 mother of the victim has stated in her cross-examination that on the day when her daughter (victim) came out of her house, on the same day at about 8-9 P.M. in the night, written information was given to Police regarding her missing daughter and thereafter a case was instituted on 03rd January, 2014. She has also stated that when she and her husband (P.W.8) went to Patna and met their daughter, then the accused was also with her.

17. P.W.8 is the informant and father of the victim who had also stated that on 04th December, 2013, her

daughter (victim) aged about 16 years was going for tuition and when she had not returned in the evening and she could not be found after search, by his wife, then they came across to the fact that his daughter was enticed away by the accused. He also stated that his daughter Neetu Kumari (P.W.5) came to his place and corroborated the fact that the accused i.e. her husband (appellant/convict) had taken her daughter (victim) somewhere.

18. P.W.2 is brother of the victim who has stated in cross-examination that Dilip is not his relative rather he was the relative of the accused and the victim had told that she has made call from Dilip's mobile phone, while he was present there. He further stated that her sister (victim) had not disclosed any other things about Dilip and Dilip is the resident of Patna and his mother (P.W.-3) and father (P.W.-8) after returning from Patna had stated that Dilip was also present there.

19. P.W.4 is also the brother of the victim and has stated that his sister (victim) went missing when she left the home for the tuition on 04th December, 2013 at about 2:30 P.M. and on 21st March, 2014, he came to know that the victim had been enticed away by the accused who is his *Jijaji* and husband of his sister Neetu and Neetu told that the accused had taken away the victim. He has also stated that his sister (victim) telephonically intimated that she was at Hanuman Nagar, Patna and thereafter his mother (P.W.-3) and father (P.W.-8) went there and then his sister (victim) came back. During his cross-examination he has also stated that in the night of 04th December, 2013, a written report was given regarding missing of his sister.

20. P.W.5 is the wife of the appellant/convict and real second elder sister (*Manjhli* sister) of the victim who has

stated that when her sister (victim) had taken to the quarter at Sector-11 on 04th December, 2013, she was at her in-law's house at Nawadih and her husband came there during 'Chhat Puja' and did *Mar Pit* with her and went away. Further, she has stated that the whole incident was revealed/narrated by her sister (victim). At para 4 of her examination-in-chief, she has stated that when she was at her matrimonial home (*Sasural)* then her husband had arranged for her to speak to her sister (victim) and she has divulged this fact to her parents and at the time of the incident, age of her sister (victim) was about 16 years. In cross-examination, she has categorically stated that she was having no good relation with her husband and her husband used to give beatings and abused her but she did not make complaint against the conduct of her husband anywhere, as she was thinking that one day he would mend his ways.

21. P.W.9 is the I.O. of the present case who has stated that he telephonically came across the fact that the victim has been recovered and brought back to her place by the parents of the victim. In cross-examination, he has stated that he had not visited the house of the accused and also had not gone to Patna.

22. P.W.10 is the hearsay witness. P.W.11 is the Magistrate who had recorded the statement of victim under Section 164 Cr.P.C. and the same has been marked as Ext.6 in the present case.

23. P.W.1 is the Doctor who has examined the victim and prepared the report and she has found victim's hymen absent and no external injury on the private part of the victim and opined that the radiological age of the victim as above 18 years. She has also opined that no sign of recent sexual intercourse was found and proved the medical report which has been marked as Ext.1.

24. P.W.7 is an independent witness who had reiterated the incident in consonance with the content of the F.I.R. He has stated in his cross-examination, that the victim managed shop of tea and fritters and he had an interaction with her as he sat on her shop.

25. P.W.10 is also an independent witness who had stated to the extent that the accused had taken away the victim and after the elapse of some days, she was found.

26. Before analysing the evidence, this Court finds it appropriate to discuss about the ingredient of Section 366 of IPC for which the accused has been charged. The ingredients of Section 366 of IPC read as under –

> ***366. Kidnapping, abducting or inducing woman to compel her marriage, etc.***—*Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;* [1]*[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].*

27. On the bare reading of the above provision, it transpires that in order to constitute the offence of "abduction", a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this section. The volition, the intention and the conduct of the accused determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete,

whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse.

28. The Hon'ble Supreme Court in the case of ***Kavita Chandrakant Lakhani v. State of Maharashtra***, reported in ***(2018) 6 SCC 664*** has held that mere abduction of women does not attract offence under Section 366 of IPC rather the prosecution has to establish that she was compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

> ***17.*** *Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the court cannot hold the accused guilty and punish him under Section 366 IPC.*
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> ***21.*** *This Court has time and again held that mere abduction does not bring an accused under the ambit of Section 366 IPC. It must be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.*

29. As far as, the victim is concerned, she has stated in her statement before the Court under Section 164 Cr.P.C. has stated that her age as 16-17 years and her parents has also stated her age as 15-16 years. It is evident that the victim had gone to attend the tuition class on the day of incident which indicates that she was student studying but no educational certificate *qua* the age of the victim has been brought on record on behalf of the prosecution

and the reason best known to them. Record further reveals that P.W.-1 doctor has stated in her testimony that on the basis of radiological report, the age of the victim is **above 18 years at the time of incident**. This Court is of considered view that as the educational certificate *qua* the age of the victim has not been brought on record on behalf of the prosecution despite the fact that the victim was studying somewhere. This Court is inclined to accept the radiological age i.e. above 18 years in the circumstances of the case and as opined by the doctor on the basis of medical examination.

30. Coming to the fact of the case in hand, it transpires from the evidence of the victim (P.W.-6) that she has stated in her testimony that on 04.12.2013 at about 2:30 P.M. while she was going to attend the tuition, the accused asked her to sit on his motorcycle and he would drop her to the tuition class but the victim was taken at Sector-11C on the pretext to meet her sister, who is wife of the accused but when the victim had been taken to the quarter at Sector-11C, she did not find her sister, then the room was closed from inside and the threat had extended by the accused that he would liquidate her second elder sister (*Manjhli* sister) if she would make hue and cry. Thereafter, the victim has stated that on 11.12.2013 she was taken to Patna, but from 04.12.2013 to 11..12.2013 the victim had not uttered a word in her testimony about the period that how she was kept and whether accused the appellant/convict was with her in the quarter or not. She has stated in her testimony that near the quarter of the accused where she was kept at Sector-11C, there were quarter of two other persons. It is also surprising that the victim was taken to Hanuman Nagar at Patna and both of them i.e. the victim and appellant/convict stayed for couple of days at Dilip's

house where Dilip was residing with his wife and children. The victim has even stated that the appellant/convict had not resided for the entire period of approximately two and half months rather the appellant/convict had initially stayed for two days when they had gone to Patna and thereafter, he left Patna. She had made allegation regarding the fact that she was forced by the appellant/convict to get herself engaged in the prostitution which was running in the house of Dilip. When, according to the victim herself, the appellant/convict had not resided continuously with her, this Court finds it difficult to comprehend how the appellant/convict could have forced her to indulged in or become involved in prostitution, thereby, creating a doubt regarding the prosecution case.

31. From another perspective, it also appears improbable that if the victim had been forced to engage in the prostitution, she would have stayed for such a long period without making any attempt to flee from the house of Dilip. Rather later on, in her testimony the victim stated that she had made call/message from Dilip's mobile phone and she was subsequently taken back by her parents from Dilip's house. These circumstances suggest that the victim was residing at Dilip's house of her own free will and accord and that there was no pressure or coercion upon her.

32. It is also difficult to understand that when the F.I.R. for the offence under Section 366A of IPC was already got registered and the parents of the victim got information regarding the place of stay of the victim, then why Police officials were not involved in recovery of the victim rather her parents had gone by their own to Patna and brought her back and thereafter intimation was given to Police personnel, which is very much evident from the testimony

of I.O. (P.W.-9). P.W.-9 has also stated that he had not inspected the place of residence of the appellant/convict at Bokaro and he had also not visited Patna. Of course, Doctor (P.W.-1) has found scar mark on the forearm of the victim but it is difficult to conclude that the same had been caused by the blade injury inflicted by the appellant/convict. It is not the case of the victim that she had been taken by allurement or enticed away for the purpose of the marriage or for the purpose of illicit intercourse (prostitution) rather she had stated that when she had visited Patna along with the appellant/convict, then she was forced by the appellant/convict to get involve in the prostitution. Admittedly, the victim was real younger Sali (sister-in-law) of the accused.

33. A close conspectus of the material available on record renders the prosecution case doubtful and raises serious questions regarding its credibility. **Firstly**, P.W.–3, the mother of the victim and P.W.- 4, her brother, have stated in their respective testimonies that the police were informed on the evening of 04.12.2013 itself, when the victim was found missing. However, the informant, i.e., the father of the victim has stated in the F.I.R. (Exhibit - 5) that the information regarding her missing was given to the police only on 05.12.2013. More significantly, although it is stated in the F.I.R. that on 10.12.2013 the wife of the accused, P.W. – 5, was brought by the accused to the house of the informant and disclosed that the victim had been taken away by the accused, no immediate information was thereafter given to the police. The F.I.R. came to be lodged only on 03.01.2014. The delay, in the facts and circumstances of the case, remains unexplained.

Secondly, the victim has stated that she was taken to a quarter at Sector-11C, Bokaro, where she was allegedly

kept under threat of death of herself and her sister. However, she has not attributed any specific sexual act or other overt act to the accused during the period from 04.12.2013 to 11.12.2013 when she was taken to Patna. Her testimony further indicates that the accused did not remain with her continuously rather he used to come only for a day or two. She has specifically stated that the accused remains with her for about two days at the house of Dilip at Hanuman Nagar, Patna.

Thirdly, according to the victim, it was only at Patna that the accused asked her to engage in prostitution and, upon her refusal, directed her to demand Rs. 2,00,000/- from her mother. The victim thereafter communicated with her mother over the telephone, disclosed the said demand and also informed about her whereabouts, then her parents consequently came to Patna to take her back to Bokaro.

34. The subsequent conduct of the parents assumes considerable significance. Both the mother and the father of the victim have stated that, when they met the victim at Patna, the accused was also present there. If the accused had, in fact, committed the alleged wrongful act upon the victim, his presence at the very place where the parents found their daughter provided an immediate opportunity to report the matter to the police and seek appropriate legal action against him. Yet, no such immediate action appears to have been taken. This unexplained conduct, when considered alongside the material inconsistencies regarding the timing of the police intimation and the substantial delay in lodging the F.I.R., casts a serious doubt upon the prosecution version. Thus, the cumulative effect of the aforesaid circumstances, rather than lending assurance to the prosecution case, creates a reasonable doubt as to the

manner in which the occurrence is alleged to have taken place.

35. Considering the legal proposition and discussion based on the evidence in the preceding paragraph, this Court is of considered view that there is material contradiction in the testimony of the victim and her version casts doubt in the mind of this Court about her abduction and forcing her to involve herself in prostitution, as such, the prosecution has failed to bring home any of the ingredients of Section 366 of IPC against the appellant/convict.

36. Accordingly, for the reasons stated hereinabove, the judgment of conviction dated 03.04.2017 and order of sentence dated 04.04.2017 passed by learned Additional Sessions Judge-II, F.T.C, Bokaro in S.T. No. 09 of 2015 are, hereby, set aside.

37. The present criminal appeal being Cr. Appeal (SJ) No. 1050 of 2017 is, hereby, allowed.

38. Since, the appellant is already on bail, he is discharged from the liability of his bail bonds.

39. Let trial court record be sent back to the court concerned forthwith.

40. Pending I.A., if any, also stands disposed of.

(Arun Kumar Rai, J.)

Pramod/Umesh-
Dated, the 21.09.2026
A.F.R.