IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 667 of 2009

[*Against the Judgment of conviction dated 15.05.2009 and Order of sentence dated 16.05.2009 passed by learned Additional Sessions Judge, F.T.C.-II, Dhanbad, in Sessions Trial No. 177 of 2004*]

Kali Das, son of Charku Das, Resident of Village – Phulwar, P.S. – Katras, District – Dhanbad.

... ... **Appellant**

Versus

The State of Jharkhand ... ... **Respondent**

.....

For the Appellant : Mr. Lukesh Kumar, Advocate
For the Respondent : Mr. Fahad Allam, A.P.P.
For the Informant : Mr. Sidharth Sudhanshu, Adv.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 16.09.2026 Pronounced on 06.11.2026

1. Heard learned counsel for the parties.

2. The present criminal appeal is directed against the judgment of conviction dated 15.05.2009 and order of sentence dated 16.05.2009 passed by learned Additional Sessions Judge, F.T.C.-II, Dhanbad in Sessions Trial No. 177 of 2004, whereby and whereunder, the appellant has been held guilty for the offence under Section 366 of the I.P.C. and directed to undergo R.I. of 5 years along with fine of Rs. 2000/- with default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that on 08.12.1997, the informant along with his wife had gone to his sasural and he returned to his own house,

leaving his family. It is further alleged that on 10.12.1997, informant's son-in-law Subhash Dhobi and eldest daughter Nupur Dhobi informed that in the night of 09.10.1997, informant's minor daughter, aged about 15 years went away with Kali Das. The informant enquired at the house of Kali Das, then came to know that he has gone to fetch Kulti Barakar mela along with his daughter. The family members of Kali Das also assured that when his daughter will return, they will send back to her home. Therefore, informant immediately did not institute any case. Later on, informant came to know that his daughter has been taken away elsewhere by Kali Das, then he lodged a written report before Katras Police Station. Accordingly, F.I.R. being Katras P.S. Case No. 345 of 1997 was registered for the offence under Section 363 and 366(A) of the I.P.C.

4. In course of investigation, victim girl was recovered. Her statement was also got recorded under Section 164 Cr.P.C. and she was medically examined. Finding sufficient evidence against the accused, the I.O. has submitted charge sheet for the offence under Sections 363 / 366(A) of I.P.C. The case was committed to the court of Sessions, where S.T. No. 177 of 2004 was registered. The trial court has framed charge under Sections 363 and 366 (A) of the I.P.C. against the

accused, to which, he pleaded not guilty and claimed to be tried.

5. In course of trial, altogether 08 witnesses were examined by the prosecution. Apart from oral testimony of witnesses, following documentary evidence were adduced by the prosecution :-

Exhibit-1 : Formal F.I.R.

Exhibit-2 : Signature of informant on written report.

Exhibit-3 : Statement of victim recorded under Section 164 Cr.P.C.

6. The case of defence is denial from occurrence and false implication and plea of innocence. On behalf of defence only one witness has been examined. However, no documentary evidence has been adduced by the defence.

7. The learned trial court, after evaluating the evidence do not find ingredients of offence under Sections 363 and 366A of the I.P.C. but on the basis of evidence of victim girl, recorded the findings of guilt for the offence under Section 366 of I.P.C. against the appellant and convicted and sentenced him thereunder, as stated above, which has been assailed in this appeal.

8. Learned counsel for the appellant has vehemently argued that most of the witnesses including the

victim, who has been examined as P.W.-8, have admitted that the victim was major, aged about 20 years on the date of occurrence and she voluntarily went with the appellant and solemnized marriage with him and started living as husband and wife. Later on, under pressure of her parents, she resiled from her earlier version, as stated in Section 164 Cr.P.C. and contested the case against the appellant, due to which, the appellant has been convicted in this case. There are material exaggerations and improvement in the testimony of the victim girl (P.W.-8), which demolishes her veracity. Other witnesses are not eye-witness of the occurrence. The learned trial court without taking into consideration that he has already acquitted the appellant for the offence under Section 363 / 366A of I.P.C. finding the victim girl to be major one, but without any ingredients proved by prosecution for the offence under Section 366 I.P.C. has convicted him without framing alternate charge against the appellant. Therefore, the impugned judgment of conviction and order of sentence of the appellant is absolutely illegal and liable to be set aside. This appeal may be allowed.

9. On the other hand, learned APP appearing for the State assisted by learned counsel for the informant has opposed the aforesaid contentions raised on

behalf of the appellant and submitted that there is clinching and consistent evidence of victim girl against the appellant, who has categorically stated about kidnapping and rape by the appellant. There is no reason to disbelieve the testimony of victim girl. The learned trial court has very wisely and aptly analyzed and scanned the evidence available on record, while recording the findings of guilt of the appellant, which suffers from no illegality or infirmity, calling for any interference in this appeal, which is devoid of merit and fit to be dismissed.

10. I have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both side.

11. The only point for determination is that "as to whether the impugned judgment of conviction and order of sentence of appellant is legally sustainable or not?".

12. Before adverting to adjudicate upon above point, it appears pertinent to take brief resume of the evidence of witnesses examined during trial.

13. It appears that out of eight witnesses examined in this case, the most important witness is the P.W.-8. According to her testimony dated 18.07.2006, she has disclosed her age as 28 years. Even 09 years is deducted from the above disclosed age, the age of the

victim comes around 19 years on the date of occurrence. It also appears that on the date of her evidence, she was married with one Rajinder. This witness has given absolutely go-bye to her earliest version as contained in statement recorded under Section 164 Cr.P.C. and stated that on the date of occurrence at about 10 to 10:30 P.M. in the night, she was at her parental home alone. Her door was opened, in the meantime, Kali Das entered in her room and started saying to follow him, but she denied, then the accused gaged her mouth and something was sprig in the cloth, due to which, she became unconscious. When she regains conscious, she finds herself at the sister's house of Kali Das, where Kali Das committed rape with her and also went along with her to her brother's sasural at Kultipara and stayed about 2-4 days. She also states that in the Bengal at any place like Court, Kali Das also solemnized marriage with her. She was also brought to Dhanbad Civil Court, where police arrested both of them and she was handed over to her parents. Her statement was also recorded by Magistrate under Section 164 Cr.P.C., which was read over and explained to her and after understanding the contents put her thumb impression, she was also medically examined at the instance of police.

In her cross-examination, she states that at present, she does not re-collect whatever was stated before Magistrate under Section 164 Cr.P.C. statement, but she denies that she has not stated before the Magistrate that she voluntarily accompanied with the accused and solemnized marriage with her at Kali Temple.

She has denied suggestion of defence that she is giving false evidence at the instance of her parents.

14. **P.W.-1 Bhushan Ch. Mahto** is a formal witness-cum-Advocate Clerk, who has proved the formal F.I.R. as Exhibit-1.

15. **P.W.-2 Badri Rajak** has stated that on the date of occurrence at about 9:00 P.M., he saw accused Kali Das was forcibly taking away the victim girl. He raised alarm and also informed to father of Kali Das and parents of victim girl. After 12 days, Kali Das and victim girl returned and the victim was handed over from the court of C.J.M. to her parents.

16. **P.W.-3 Baishali Devi** is the mother of the victim. According to her evidence also, she had gone along with her husband. Her minor daughter was alone in the house with two other small children. She was informed that Kali Das has kidnapped her daughter for solemnizing marriage with her. Her daughter was

handed over by the Court. Now she has been married living at her matrimonial home.

17. **P.W.-4 Ranglal Dhobi** is the father of the victim girl – cum – informant. He has proved the contents of his written report and consistently stated that he lodged the case against the accused for kidnapping his daughter for solemnizing marriage with her. His daughter was recovered by police and her daughter has made statement before Magistrate and after medical examination, she was handed over to him. The victim girl has disclosed about solemnization of marriage and commission of rape by the accused.

18. **P.W.-5 Sarju Gope** has been declared hostile.

19. **P.W.-6 Dhaneshwar Dhobi** came to know about the occurrence in the next day morning that the victim girl has been taken away by Kali Das for solemnizing marriage with her. He made a search of victim, but no clue was found and after 15-20 days, she was handed over from the court of C.J.M. to her parents.

In his cross-examination, he reiterates that he heard the incident and has no personal knowledge.

20. **P.W.-7 Sarju Singh** is also hearsay witness and simply stated that he heard about kidnapping of victim girl by the accused for solemnizing marriage.

21. On the other hand, one defence witness **Kishun Rajak**, who is none else but real brother of the victim has been examined. According to his evidence, the occurrence is of the year 1998. At that time, his younger sister (victim girl) was aged about 21 years. He also admits that Kali Das has not enticed and taken her away, rather she voluntarily went with the accused of her own accord.

There is nothing in his cross-examination to rebut his above testimony.

22. It appears that although medical examination of victim was conducted by Medical Officer, but her medical examination report has not been proved and brought on record.

23. From the aforesaid discussions of prosecution evidence, it is crystal clear that there is no authentic evidence about age of the victim at the relevant time of occurrence. The victim in her statement under Section 164 of Cr.P.C. disclosed her age to be 20 years. The own brother of the victim (D.W.-1) disclosed her age as 20 years on the date of occurrence, who accompanied with the accused on her own accord and also solemnized marriage against the will of her parents. It also appears that in her initial statement before Magistrate, which was

recorded on Oath, the victim has stated in clear terms that she voluntarily went with the accused and residing with him as husband and wife, no force or violance was used against her, rather there was love affair. The victim, while examination during trial, has also admitted that her statement was recorded by Magistrate, which was read over and explained to her and after finding everything correct, she put her thumb impression. Therefore, the evidence of the victim during trial, which has tendency of material improvement in her earlier version and levelling accusation against the appellant that he forcibly gaged her mouth and something obnoxious was smelt and she became unconscious. Thereafter, she found herself in the sister's house of the accused and other story of forcible marriage and sexual intercourse has been alleged, all these material improvements are indicative of the facts that under influence of her parents, she has given false evidence to implicate the accused and get his conviction. It further transpires that the learned trial court has absolutely ignored the evidence of D.W.-1, who is none else, but the own brother of the victim, to the extent that on the date of occurrence, the victim was 21 years old. The learned trial court, although acquitted the appellant from the

offence under sections 363 and 366A of the I.P.C., but placing reliance upon truthfulness of the story depicted by victim in her evidence before court, convicted him for the offence under Section 366 of the I.P.C.

24. The overall factual aspects, which emerges from the very inception clearly, goes to show that there was love affair between appellant and victim girl. The victim girl taking advantage of absence of her parents voluntarily accompanied with the accused calling her at her house at odd time of night i.e. 10-10:30 P.M., it is quite unbelievable that anything was smelt to her, due to which she became unconscious. If that be so, how she was taken by the accused under unconscious state also proves the falsity of the case. The victim has travelled several places along with appellant without raising any hue and cry which also indicates her voluntariness and consent throughout. It is also evident that on the date of occurrence, the victim girl was major and she has taken extreme steps of fleeing away from her house of her own accord. Therefore, no ingredients of offence under Section 366 of I.P.C. is also proved in this case against the appellant.

25. In view of above discussions and reasons, the judgment of conviction and order of sentence passed by the learned trial court is hereby set aside. The

appellant is acquitted from the charges leveled against him.

26. Accordingly, this appeal is **allowed**.

27. The appellant is on bail. He is discharged from the liability of bail bonds.

28. Pending I.A., if any, stand disposed of.

29. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated, the 6th November, 2026.
Sunil /**N.A.F.R.**
Uploaded on 06/11/2026