

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 1403 of 2008

[Against the judgment of conviction dated 26.11.2008 and order of sentence dated 27.11.2008 passed by the learned Additional District & Sessions Judge-II, Chaibasa in S.T. No.312 of 2007]

Bikram Das @ Goltu, S/o-Dawarka Das @ Durga Das, resident of Wagan Line, Barbil, P.O. & P.S.-Barbil, Dist.-Keonjhar (Orissa)

.....Appellant

Versus

The State of Jharkhand

.... Respondent

For the Appellant : Mr. R.P. Gupta, Advocate

For the Resp.-State : Mr. Naveen Kr. Ganjhu, A.P.P.

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

Dated:23rd April, 2026

1. Heard Mr. R.P. Gupta, learned counsel for the appellant and learned A.P.P.
2. Instant criminal appeal is directed against the judgment of conviction dated 26.11.2008 and order of sentence dated 27.11.2008 passed by the learned Additional District & Sessions Judge-II, Chaibasa in S.T. No.312 of 2007, whereby and whereunder the appellant has been held guilty for the offence under section 366 of Indian Penal Code and sentenced to undergo R.I. for 4 years along with a fine of Rs.3,000/- with default stipulation.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 15.10.2007, the informant Sobha Ram Das along with his family members went to village, Daudungua to attend the shardh of his brother on 16.10.2007. In that Sharadh, Bikram @ Golut Das (appellant), who happens to be

brother-in-law (sala) of his cousin Ravindra Das, also came in a car. At about 2:00 pm, the appellant asked the wife of the informant to take his daughter to visit Budh Bazar, but his wife at first denied the request. Thereafter, the appellant again requested to the wife of informant through his mother and sister, then the informant's wife gave consent to take her daughter to visit the place. On 17.10.2007, the appellant came to Budh Market in the car and all the other persons came out from the car except the victim girl and the accused/appellant went away from there with the victim girl in the said car saying that he is coming back after visiting Jhinkpani Colony with the victim girl. All the persons came back to village from the market but the appellant and the victim girl did not come back to village till the evening. Thereafter, the informant searched them but he could not trace them out. The informant along with one Harindan Bhanj went to the house of the appellant where the father of the appellant informed that the appellant came to his house for 10 minutes but he went away without informing him. Subsequently, the victim girl informed her father (informant) that the appellant had confined her and threatening her to marry him. Hence, the FIR was lodged.

4. On the basis of aforesaid information, Tonto P.S. Case No.19 of 2007 was instituted for the offence under section 366A of IPC. After completion of investigation, the charge-sheet was submitted against the

appellant and after taking cognizance, the case was committed to the court of Sessions, where S.T No.312 of 2007 was registered. The appellant has denied the charges leveled against him and claimed to be tried.

5. Prosecution has examined altogether 8 witnesses in this case and following documentary evidences have also been adduced:-

Ext.1-Written Report

Ext.1/1-Endorsement on written report

Ext.2-Formal FIR

Ext.3-Statement of victim recorded under section 164 of Cr.P.C.

6. On the other hand, no oral or documentary evidence has been adduced by the defence. The case of defence is denial from occurrence and false implication.

Submission on behalf of appellant:-

7. Learned counsel for the appellant has submitted that although the victim aged about 13-14 years was accompanied with the appellant on permission given by her mother, therefore, offence of kidnapping is not constituted in this case. It is further submitted that the ingredients of offence under section 366 of IPC is also not attracted in this case. Learned counsel submits that the victim girl (P.W.1) has stated nothing against the appellant regarding any illicit intercourse with her or any

other illicit activities. The medical examination of the victim was also not conducted. At best, the case comes within the section 342 of IPC for wrongful confinement of a person for which maximum sentence is one year along with a fine of Rs.1,000/- or both. The appellant has already undergone 5 months custody during trial of the case. The occurrence is of the year, 2007 and the appellant is also related as maternal uncle of the victim girl. Therefore, he has been sufficiently punished for his guilt. Accordingly, the conviction of the appellant for the offence under section 366 of IPC may be altered to the offence under section 342 of IPC and his sentence should also be modified for imprisonment already undergone by him.

8. Learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Patna High Court in ***Keshar Paswan @ Ram Bachu Paswan and Ors. Vs. State of Bihar [2001 (2) East Cr C 357 (Pat)]***.

Submission on behalf of State:-

9. Learned A.P.P. has opposed the aforesaid contentions raised on behalf learned counsel for the appellant and defending the impugned judgment on merits has submitted that learned trial court has very wisely and aptly apprised and appreciated the prosecution evidence and arrived at right conclusion about the guilt of the appellant. Hence, there is no reasonable ground to interfere with the impugned judgment and order. This appeal has no merits and is fit to be dismissed.

Analysis, Reasons and Decision:-

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

11.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.

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.

12. In the instant case, it is abundantly clear that the victim girl had accompanied with the appellant with the consent of her mother to visit Budh Bazar and then Jhinkapani Colony. Moreover, the victim girl in her testimony has not disclosed about any intercourse or illicit activities by the appellant and the medical examination of the victim was also not conducted. Therefore, all the circumstances clearly indicate that the vital ingredients for constituting the offence under section 366 of IPC is absolutely lacking in this case. Therefore, the conviction and sentence of the appellant is not warranted under law.

13. In view of the above discussion and reasons, the conviction and sentence of the appellant for the offence under section 366 of IPC is set aside and is altered/modified to section 342 of IPC for which the

appellant has already undergone custody for about 5 months which appears to be sufficient punishment for his guilt for the offence committed by the appellant.

14. Accordingly, this appeal is **dismissed** on merits with modification in conviction and sentence as stated above.

15. The appellant is on bail. He is discharged from liability of his bail bond and sureties are also discharged.

16. Pending I.A(s), if any, is also disposed of accordingly.

17. 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.)

Pappu/-

23/04/2026