IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.812 of 2004

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Lakhan Tiwari, S/o- Bal Kishun Tiwari, resident of Mohalla- Idgar Toli, Daudnagar, Police Station- Daudnagar, District- Aurangabad

... ... Appellant

Versus

The State of Bihar

... ... Opposite Party

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Appearance :
For the Appellant/s : Ms. Kumari Anjali, *Amicus Curiae*
For the State : Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 29-11-2025

As learned counsel appearing for the appellant/accused has failed to appear when this matter was taken on Board for final hearing, therefore, this Court appointed Ms. Kumari Anjali, learned Advocate, present in Court, as an *Amicus Curiae* to assist the Court in disposal of the appeal.

2. The present appeal has been preferred by the appellant/accused under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC') challenging the impugned judgment of conviction dated 21.09.2004 and order of sentence dated 28.09.2004 passed by learned Additional District and Sessions Judge, Fast Track Court No. 5, Aurangabad in S.T. No.88 of 1990/16 of 2004, arising out of Daudnagar P.S. Case No. 74/88, whereby the trial court has convicted the above-named appellant/accused

under Sections 363 and 364 of the Indian Penal Code (for short 'IPC') and sentenced to undergo simple imprisonment for seven years and a fine of Rs. 5000/- for the offence under Section 363 of the IPC. In the event of non-payment of fine, the appellant/accused has been directed to undergo further imprisonment for one year. The appellant/accused has further been sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 5000/- for the offence under Section 364 of the IPC and in the event of non-payment of fine, the appellant/accused has been directed to undergo further simple imprisonment for one year. All the sentences have been directed to run concurrently.

3. The case of prosecution, in brief, as it appears from the *fardbeyan* of the information/P.W.-1 is that on 24.04.1988, at about 7:00-7:30 A.M., the informant's son Ranjit Kumar had gone outside the house to ease. When he reached near Devi Asthan, which is near to her house, an unknown person, finding him alone, came and caught hold his hands and started taking him towards canal, upon which Ranjit started raising alarm. The informant's cousin's daughter Sharda Kumari, aged about 6 years, who was playing there, rushed to her and told that one unknown person is taking Ranjit towards canal. On this, the

informant rushed there and caught hold the hand of Ranjit and asked from the unknown person as to why he had caught hold his son. On this, the said person started threatening her. The said person told him to keep quiet otherwise she will be slapped, whereafter the informant raised alarm, on which several people from nearby place gathered and caught hold the accused. On being asked, Ranjit told that the said unknown person told him to go to the canal side on the pretext of giving sweets. On query, the unknown accused person revealed his name to be Lakhan Tiwari of Aurangabad. In the *fardbeyan*, the informant apprehended that there was possibility of seeking ransom after kidnapping her son, and in the event of non-fulfilment of demand of ransom, there was possibility of killing her son.

4. On the basis of aforesaid *fardbeyan* of the informant, the police lodged a case as Daudnagar P.S. Case No. 74/88. After completion of investigation, the police submitted charge-sheet against the appellant/accused Lakhan Tiwari under Sections 363 and 364 of the IPC.

5. The learned Jurisdictional Magistrate, on the basis of materials collected during investigation, took cognizance of the offence, and after compliance of Section 207 of the Cr.PC, committed the case to the court of Sessions in view of Section

209 of the Cr.PC for trial and disposal.

6. The learned trial court, on the basis of materials as collected during the course of investigation, framed charge on 15.06.1993 for the offences under Sections 363 and 364 of the IPC. The charges were read over and explained to the appellant/accused, who pleaded not guilty and claimed to be tried.

7. As to substantiate its case, the prosecution has examined altogether six witnesses, namely, P.W.-1 Lalti Devi, who is the informant of this case and mother of victim Ranjit Kumar, P.W-2 Girja Das, P.W.-3 Ranjit Kumar, who is the victim himself, P.W.-4 Lakshman Sharma, P.W.-5 Sohrai Prasad and P.W.-6 Kapildeo Prasad Singh.

8. The prosecution has also relied upon following document exhibited during the course of trial:-

Sl. No.	No. of Exhibits	Documents
1.	Exhibit-1	Fardbeyan

9. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

10. No witness has been examined from the defence side.

11. It is submitted by Ms. Kumari Anjali, learned *Amicus Curiae* appearing for the appellant/accused that the present conviction was recorded by the learned trial court on the basis of suspicion, as the victim Ranjit Kumar (P.W.-3) could not identify the appellant/accused during the trial. It is submitted that I.O. of this case was also not examined, and moreover, Sharda Kumari, who accompanied the victim at the time of occurrence, could also not examined during the trial and this fact was also affirmed by P.W.-3, the victim himself that she died during the trial itself. It is further submitted that motive of kidnapping also not appears ascertained during the trial as to whether the same was for the purpose of ransom or for committing murder. It is also pointed out that the F.I.R. in issue was proved by a formal witness i.e. P.W. 6, who is an Advocate Clerk, therefore same also not appears proved during trial, which is also one of the reasons to view the judgment of conviction doubtful.

12. It is further argued that the statement of appellant/accused also appears to be recorded in a very cryptic and mechanical manner without explaining all incriminating

circumstances as per established principle of law, and on this score alone, the judgment of conviction and order of sentence are liable to be set aside.

13. Ms. Anita Kumari, learned APP appearing for the State while opposing the appeal submitted that the victim has supported the occurrence, but fairly conceded that the victim could not identify the appellant/accused during the trial and for the said reason he was declared hostile. She also conceded that Sharda Kumari, who accompanied the victim during the time of occurrence, could not examined during trial.

14. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

16. It would be appropriate to reproduce the provisions of Sections 359, 360, 363 and 364 of the IPC for the sake of convenience and better understanding of the facts, which are as under:-

> *"**359. Kidnapping.**—Kidnapping is of two kinds: kidnapping from [1][India], and kidnapping*

from lawful guardianship.

***360. Kidnapping from India.**—Whoever conveys any person beyond the limits of [1][India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from [1][India].*

***363. Punishment for kidnapping.**—Whoever kidnaps any person from [1][India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

***Classification of Offence.-** The offence under this section is cognizable, bailable, non-compoundable and triable by Magistrate of the first class.*

***364. Kidnapping or abducting in order to murder.**—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [1][imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

Illustrations

(a) A kidnaps Z from [2][India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section."

***Classification of Offence.-** The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.*

17. Upon perusal of record and taking note of submissions, it appears that P.W.-4 Lakshman Sharma and P.W.-5 Sohrai Prasad were declared hostile during the trial and nothing transpired from their testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who supported the crime in question during the trial. Therefore, the testimony of these two witnesses are not relevant qua establishing guilt of the accused/appellant.

18. It also appears that the *fardbeyan* of the occurrence was not duly exhibited during trial and was got approved by one Advocate Clerk namely Kapildeo Prasad Singh who was examined as P.W.-6. The said P.W.-6 had no occasion to serve with the I.O. of this case so as to identify his handwriting and also the endorsement made over the *fardbeyan* and, therefore, the *fardbeyan* cannot be said to be duly proved. Non-examination of I.O. in such a case appears fatal to the prosecution. In this context, it would be apt to reproduce Paragraphs-18 and 19 of the legal report of Hon'ble Supreme Court as available through ***Rajesh Patel Vs. State of Jharkhand, reported in (2013) 3 SCC 791***, which is as under:-

> *"**18.** Further, neither the doctor nor the IO has been examined before the trial court to*

prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law.

19. *In view of the above statement of evidence of PW 3 and PW 4 whose evidence is important for the prosecution to prove the chain of events as per its case, the statement of evidence of the aforesaid witnesses has seriously affected the prosecution case. Therefore, the courts below could not have, by any stretch of imagination, on the basis of the evidence on record held that the appellant is*

guilty of committing the offence under Section 376 IPC. Further, according to the prosecutrix, PW 3 who is alleged to have rescued her from the place of occurrence of offence, has clearly stated in his evidence that he does not know anything about the incident in his statement thereby he does not support the version of the prosecution. The High Court has erroneously accepted the finding of the trial court that the appellant has not been prejudiced for non-examination of the doctor for the reason that she was working as a nurse in the private hospital of PW 4 and being a nurse she knew that the information on commission of rape is grave in nature and she would not have hesitated in giving the information to the police if the occurrence was true. Further, the finding of the courts below that non-examination of the IO by the prosecution who has conducted the investigation in this case has not caused prejudice to the case of the appellant, since the prosecution witnesses were unfavourable to the prosecution who were either examined or declared hostile by the prosecution, which reasoning is wholly untenable in law. Therefore, the finding and reasons recorded by both the trial court as well as the High Court regarding non-examination of the abovesaid two witnesses in the case has not prejudiced the case of the appellant is totally an erroneous approach of the courts below. For this reason also, we have to hold that the findings and reasons recorded in the impugned judgment [Criminal Appeal No. 58 of 1999, decided on 14-11-2006 (Jhar)] that the trial court was justified in holding that the prosecution has proved the charge against the appellant and that he has committed the offence on the prosecutrix, is totally erroneous and the same is wholly unsustainable in law."

19. The most important witness of this occurrence is the victim Ranjit Kumar himself, who is the son of the informant. He supported the occurrence saying that the appellant/accused was taking him towards canal on pretext of giving him sweets, but he failed to identify the appellant/accused during the trial. This non-identification of the appellant/accused during trial by the victim is itself fatal to the prosecution. The prosecution also declared this witness hostile. Nothing transpired during his cross-examination which may suggest to the extent that he identified the appellant/accused during the trial. It also transpired from his testimony that he (victim) was accompanied by his niece, namely, Sharda Kumari, but as she died during pendency of the trial, due to certain reasons, she could not be testified before the learned trial court. Non-examination of Sharda Kumari, who is the eye-witness of the occurrence and who informed about the occurrence to P.W.-1 Lalti Devi, the mother of the victim and informant of this case, also appears fatal to the prosecution case.

20. Information in the hand of P.W.-1, namely, Lalti Devi, who is the mother of the victim and informant of this case, is totally on the basis of hearsay input as provided by Sharda

Kumari who was not testified before the trial court. Same is also about P.W.-2, Girja Das, who is the father of the victim, and certainly on their testimony the conviction as recorded by the learned trial court cannot be said sustainable in the eye of law.

21. It also appears from perusal of record that the examination of appellant/accused under Section 313 Cr.PC. was made in a very cryptic and mechanical manner and on this score the judgment of conviction also appears questionable, as this type of examination of accused is not appreciable under law in view of the judgment of the Hon'ble Supreme Court as available through ***Sukhjit Singh Vs. State of Punjab, reported in (2014) 10 SCC 270***, Paragraphs 10 and 11 whereof is reproduced as under:-

> *"**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.*

11. *In this context, we may profitably refer to a four-Judge Bench decision in Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)*

> *"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused*

> *person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."*

22. In view of aforesaid discussions of factual and legal aspects, it appears that the prosecution has miserably failed to establish the charges levelled against the appellant/accused during the trial.

23. Accordingly, the present appeal is allowed.

24. The impugned judgment of conviction dated 21.09.2004 and order of sentence dated 28.09.2004, passed by

learned Additional District and Sessions Judge, Fast Track Court No. 5, Aurangabad in S.T. No.88 of 1990/16 of 2004, arising out of Daudnagar P.S. Case No. 74/88, is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant/accused is on bail, as such, he is discharged from the liability of his bail bond. The fine deposited by the appellant/accused, if any, shall be refunded to him.

25. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Ms. Kumari Anjali, learned *Amicus Curiae* as consolidated fee for rendering her valuable professional service for disposal of the present appeal.

26. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	05.12.2025
Transmission Date	