

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.398 of 2013**

Arising Out of PS. Case No.-85 Year-2003 Thana- ARA NAWADA District- Bhojpur

Harendra Yadav S/O Ram Ayodhya Yadav R/O Village - Kurawa Tola
(Patarahi) , P.S. Sagar, District - Bhojpur Ara

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dharmesh Kumar Shrivastava, Advocate
For the Respondent/s : Mr.Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT**

Date : 30-06-2026

Heard learned counsel appearing on behalf of the
appellant and the learned APP for the State.

2. The present criminal appeal has been preferred against the judgment of conviction dated 18.04.2013 and order of sentence dated 20.04.2013 passed in Sessions Trial No. 149 of 2005 arising out of Ara Nawada P.S.Case No.85 of 2003, by the Adhoc Additional Sessions Judge IInd, Ara, whereby the learned trial court has convicted the appellant for the offence committed under Section 366 and 120 of the Indian Penal Code and sentenced him to undergo ten years Rigorous Imprisonment (R.I.) and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo R.I. for one month.



BRIEF FACTS OF THE CASE

3. The prosecution case, in brief, is that the informant, Yogendra Yadav, while working in a Cotton Mill at Sapar, Rajkot (Gujarat), became acquainted with accused Nagendra Yadav, who was employed in the same establishment. On 17.02.2003, when the informant, along with his wife and minor son, was returning to his native village, Nagendra Yadav accompanied them and allegedly persuaded them to visit his residence at Ara Town. It is alleged that after reaching Ara on 19.02.2003 and staying at the khatal of Nagendra Yadav, the informant found the very next morning that his wife, son and a box containing Rs.90,000/- were missing. Upon inquiry from the co-accused Ram Ayodhaya, he was informed that his wife and son had gone to the River Ganga and would return later, however, allegedly co-accused Ram Ayodhaya had allegedly served him food containing intoxicant and after consuming the same he remained unconscious for several days. The day he regained consciousness he found that his wife, son and the cash box were missing. Subsequently, on 26.02.2003, when the informant, along with witnesses had again approached the accused persons to know about the whereabouts of his son and wife, allegedly the accused demanded Rs.1,00,000/- to release



his wife and son and in case of failure of fulfillment of the demand he had threatened that they would be killed, which led to institution of the complaint before the learned Chief Judicial Magistrate.

4. The learned Magistrate directed the local police for investigation in exercise of power under Section 156 (3) of Cr.P.C., pursuant to which Ara Nawada P.S. Case No. 85 of 2003 was registered for the commission of offences under Sections 364, 379, 328 and 120(B) of the Indian Penal Code (I.P.C.) against four accused persons, including the appellant.

5. The police submitted a charge-sheet against the appellant under Sections 366, 364, 379 and 120(B) of the Indian Penal Code on 26.11.2023. Cognizance was taken on 07.02.2004, and the case was committed to the Court of Sessions on 18.03.2005. Charges were framed against the appellant on 07.01.2006 leading the conviction of the appellant upon completion of trial.

ARGUMENTS ON BEHALF OF THE APPELLANT

6. Learned counsel appearing on behalf of the appellant submitted that the prosecution has failed to establish the charges beyond reasonable doubt. He contended that the main allegation is against co-accused Nagendra Yadav and the present appellant



has been implicated solely because he is the brother of the co-accused, in spite of the fact, no material has come against the appellant that he had participated in the alleged abduction of the informant's wife or son and he had shared any common intention with the main accused, so as, to attract the provisions of 120-B of the IPC. Referring to the testimony of P.W.1, Om Prakash Yadav, the son of the informant. He in his examination-in-chief, gave varying versions regarding the circumstances in which his mother allegedly went away on her own, which creates serious doubt about the veracity of his testimony and the prosecution case as a whole.

7. Learned counsel further submitted that neither any witness nor any material was brought on record in course of trial to suggest that the victim was kidnapped by the appellant as would also appear from the deposition of P.W.5, who is the victim and she also has not supported the prosecution story. P.W.5 in her statement in police custody that she on her own had accompanied the co-accused which demolishes the accusation of kidnapping and, as such, the prosecution having miserably failed to prove the charges against the appellant beyond reasonable doubt, renders the impugned judgment of conviction and order of sentence to be set aside.



ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has erred no mistake in passing the order conviction against the appellant.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. 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.

11. The conviction of the appellant is under Section 366 and Section 120-B of Indian Penal Code. I find it appropriate to reproduce the provisions of Sections 366 and 120-B of the IPC for the sake of convenience and better understanding of the facts, which are 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; 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 be punishable as aforesaid.

120B. Punishment of criminal conspiracy.—

(1)Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2)Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

12. To constitute the offence of abduction, it must be shown that a person was unlawfully taken away or induced to move from one place to another either by the use of force or through deceitful means. The essence of the offence lies in the intention with which the accused acts. It is the accused's conduct, volition and underlying purpose that are determinative of whether the offence is made out. The crucial issue in every case is the intention accompanying the act of taking or inducing the woman to leave a particular place. Once the requisite



criminal intent on the part of the accused is established, the offence stands complete irrespective of whether the intended object was ultimately achieved and regardless of whether the woman subsequently consented to marriage or sexual relations.

13. It is a well-settled principle that, for bringing home a charge under Section 366 IPC, the prosecution must establish not merely that the woman was taken or induced to move from one place to another, but also that such inducement was effected by force or deceitful means and was accompanied by the requisite criminal intent contemplated under the provision. The prosecution is further required to prove that the abduction was committed with the intention that the woman may be compelled to marry any person against her will, or that she may be forced or seduced to illicit intercourse, or with the knowledge that such consequences were likely to follow. Mere proof of abduction, by itself, is insufficient to attract the provisions of Section 366 IPC. The gravamen of the offence lies not only in the act of taking away the woman but also in the specific purpose and intention behind such act. Therefore, unless the prosecution succeeds in proving that the abduction was for one of the purposes enumerated under Section 366 IPC, a conviction under the said provision cannot be legally



sustained.

14. In case of *Kavita Chandrakant Lakhani v. State of Maharashtra*, reported in (2018) 6 SCC 664, the Apex Court has observed that 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 which is reproduced hereinafter:

“16. 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.

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.”

15. The aforesaid proposition of law was reiterated by the Apex Court in case of ***Mohd. Yousuff v. State of Karnataka***, reported in ***(2021) 16 SCC 461***.

16. The question arises, whether the judgment of conviction dated 18.04.2013 and order of sentence dated 20.04.2013 passed against the appellant for the offences under Sections 366 and 120-B of the IPC is justified?

17. During the trial, the prosecution has examined altogether four witnesses, namely:

- i P.W.-1 Om Prakash Yadav
- ii P.W.-2 Yogendra Yadav (informant)
- iii P.W.-3 Surendra Yadav
- iv P.W.-4 Bindhyachal Yadav(informant)



v P.W.-5 Meera Devi (victim)

vi P.W.-6 Daya Ram Singh @ Daya Nand Yadav

vii P.W.-7 Singhashan Yadav

viii P.W.-8 Paras Nath Yadav

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

(i) Ext.1 – Signature on the statement

(ii) Ext.1/1 – Complaint petition

19. I have perused the records of the case and governing law. Now, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

P.W.1 – Om Prakash Yadav:

P.W.1 is the son of the informant and one of the alleged victims. He identified his signature on the statement recorded under Section 164 Cr.P.C., which was marked as Ext.1. In his deposition, he stated that while returning from Sapar (Rajkot) along with his parents, accused Nagendra Yadav accompanied them and persuaded them to visit Ara. According to him, after staying at the khatal of Nagendra Yadav, he and his mother were taken away by accused Nagendra Yadav and were kept at different places, including Kudhwa Tola and Mumbai. He



further stated that when they later came to Buxar Railway Station, he met his father, whereupon the accused persons fled away with his mother. In cross-examination, he admitted that he was a student of Class V at the relevant time and supported the fact that he had stayed with his mother at Kudhwa Mohalla and Mumbai. The trial court found his testimony corroborative of the evidence of P.W.2.

P.W.2 – Yogendra Yadav (Informant):

P.W.2 is the informant of the case and identified his signature on the complaint petition marked as Ext.1/1. He substantially reiterated the allegations made in the complaint petition. He deposed that while returning from Sagar (Rajkot) on 17.02.2003 along with his wife and son, accused Nagendra Yadav persuaded them to visit Ara Town. After reaching the khatal of the accused persons and taking meals, he went to sleep and on waking found his wife and son missing. He stated that accused Ram Ayodhya informed him that they had gone to the Ganga for bathing and worship. He further alleged that after consuming food provided by the accused persons, he became unconscious for several days and, upon regaining consciousness, found that his wife and son were still missing. He further deposed that the accused persons later demanded Rs.1,00,000/- for their release. In cross-



examination, he stated that Meera Devi was his second wife and that he had married her in the year 1995 after separating from his first wife. The trial court found that his evidence regarding the stay at the khatal and subsequent disappearance of his wife and son remained substantially unshaken.

P.W.3–SurendraYadav: P.W.3 did not support the prosecution case and was declared hostile. He denied having any knowledge regarding the alleged occurrence and stated that he had not been interrogated by the police in connection with the case. Nothing material supporting the prosecution case could be elicited from his evidence.

P.W.4–VindhyaChalYadav: P.W.4 was also declared hostile by the prosecution. He denied any knowledge of the alleged occurrence and did not support the prosecution version. His evidence did not advance the prosecution case in any manner.

P.W.5 – Meera Devi (Alleged Victim):
P.W.5 is the alleged victim and wife of the informant according to the prosecution case. However, she did not support the prosecution version and was declared hostile. She stated that she had never married the informant and further alleged that her statement recorded before the Magistrate had been made under



pressure from the police. She specifically denied the prosecution allegation that accused Nagendra Yadav had forcibly abducted her after administering poison to the informant. Her evidence was completely contrary to the prosecution case and substantially weakened the allegation of kidnapping.

P.W.6 – Daya Ram Singh @ Dayanand Yadav:

P.W.6 was declared hostile by the prosecution. He denied any knowledge of the alleged occurrence and stated that he had not been questioned by the police regarding the incident. No material supporting the prosecution case emerged from his testimony.

P.W.7 – Singhasan Yadav:

P.W.7 was also declared hostile. He denied knowledge of the occurrence and did not support the prosecution case. His evidence was of no assistance to the prosecution.

P.W.8 – Paras Nath Yadav:

P.W.8 (referred to as P.W.9 in portions of the trial court judgment) was declared hostile by the prosecution. He denied having any knowledge of the alleged incident and did not support the prosecution version. Nothing favourable to the prosecution could be elicited from his evidence.

20. On the basis of materials surfaced during the trial,



the appellants/accused were examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and show their complete innocence.

21. Having considered the facts and circumstances of the case and the material, which has come in course of trial, I find that the learned trial Court has erred in concluding that the present appellant, Harendra Yadav, shared the common intention or was a party to any conspiracy with the co-accused, Nagendra Yadav, so as, to attract the allegations under Sections 366 and 120B IPC.

22. From the evidence available on record, it transpires that the main allegation of taking away the victim is directed against co-accused Nagendra Yadav. Significantly, the alleged victim, P.W.5 (Meera Devi), has herself not supported the prosecution case and has categorically denied that she was forcibly abducted by the accused persons. She has further denied material aspects of the prosecution story and has not attributed any overt act whatsoever to the present appellant. Mere relationship of being brother of the co-accused and his presence at the place of occurrence cannot be established that there was prior meeting of mind for establishing offence under



Section 366 and 120(B) of I.P.C without any independent corroboration.

23. The record further reveals that P.Ws.3, 4, 6, 7 and 8 were declared hostile and did not support the prosecution case, leaving the prosecution to rest substantially upon the testimonies of P.Ws.1 and 2. Even their evidence does not disclose any specific act on the part of the appellant indicating that he had induced, compelled, or deceived the victim into going from one place to another, nor is there any material to establish that he possessed the requisite intention contemplated under Section 366 IPC. Likewise, there is no cogent evidence demonstrating any agreement or meeting of minds between the appellant and the co-accused so as to constitute the offence of criminal conspiracy under Section 120B IPC. From the records of the case and the testimony of the victim herself, it is evident that no specific allegation has been levelled against the appellant so as to attract the ingredients of the aforesaid offences. In such circumstances, the finding of guilt recorded by the trial Court is not borne out of the evidence on record.

24. The impugned judgment dated 18.04.2013 and order of sentence dated 20.04.2013 passed in Sessions Trial No. 149 of 2005 arising out of Ara Nawada P.S. Case No. 85 of 2003



by the learned Adhoc Additional Sessions Judge II, Ara is hereby quashed and set aside. Consequently, the above-named appellant is acquitted from all the charges levelled against him. Since the appellant is on bail, as such, he is discharged from the liability of his bail bond. The fine deposited by the appellant, if any, shall be refunded to him.

25. Accordingly, the present appeal is allowed.

26. There shall be no order as to cost.

27. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

chn/-

AFR/NAFR	
CAV DATE	22.06.2026
Uploading Date	30.06.2026
Transmission Date	30.06.2026

