

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.433 of 2018**

Arising Out of PS. Case No.-5 Year-2011 Thana- DEHRI TOWN District- Rohtas

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AAS NARAYAN @ AAS NARAYAN KUMAR @ BHUARA S/o Bhagwan
Ram, R/o Village- Agiaon Narayanpur, P.S.- Narayanpur, P.S.- Narayanpur,
District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Ravi Prakash, Advocate
For the State : Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 13-08-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor appearing for the State.

2. The present appeal has been preferred against the judgment of conviction dated 05.01.2018 and order of sentence dated 06.01.2018 passed by the learned Presiding Officer, Fast Track Court No.2, Rohtas at Sasaram in connection with Sessions Trial No. 134 of 2011 arising out of Dehri P.S. Case No. 05 of 2011, whereby the appellant has been convicted for the offences punishable under Sections 366 and 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 50,000/- under each of the aforesaid sections and in default of payment



of fine, to further undergo simple imprisonment for one year under each section. Out of the fine amount, Rs. 40,000/- has been directed to be paid to the victim as compensation. The period already undergone by the appellant in custody has been directed to be set off under Section 428 of the Cr.P.C.

3. The prosecution case, as unfolded in the written report of the informant, namely Kiran Devi (P.W.-2), is that she, along with her husband and minor daughter, namely Pooja Kumari, had come from Ludhiana to Dehri to celebrate the Chhath festival. About eight days after Chhath, Pooja Kumari went to the market to purchase medicine for headache, but did not return home. On making inquiries, the informant and her husband learnt that the appellant, namely Aasnarayan @ Mujra, had taken away Pooja Kumari. On 29.12.2010, they went to the house of the appellant, where they found Pooja Kumari. It is alleged that on seeing her parents, the victim disclosed that the appellant had enticed and taken her away, forcibly kept her with him, committed rape upon her repeatedly and threatened to sell her at Delhi or Kolkata.

4. On the basis of the written report, Dehri P.S. Case No. 05 of 2011 was instituted under Sections 366A and 376 IPC. After investigation, charge-sheet was submitted against



the appellant and charges under Sections 366A and 376 I.P.C. were framed. The appellant pleaded not guilty and claimed to be tried.

5. In this case, in order to establish the charges, the prosecution examined altogether four witnesses. P.W.-1, namely Subhash Soni, father of the victim, supported the prosecution case and stated that after his daughter went missing, she was subsequently recovered from the village of the appellant and disclosed that the appellant had taken her away and committed rape upon her. P.W.-2, namely Kiran Devi, is the informant and mother of the victim, who also supported the prosecution case regarding disappearance and subsequent recovery of the victim. P.W.-3, namely Gyani Soni, maternal uncle of the victim, supported the prosecution version regarding the search and recovery of the victim, though he admitted that he had not witnessed the occurrence personally. P.W.-4, namely Vinod Kumar, is the Investigating Officer, who proved the formal F.I.R. and deposed regarding the investigation and recovery of the victim.

6. The victim Pooja Kumari herself was not examined before the learned Trial Court. However, her statement recorded under Section 164 Cr.P.C. was brought on



record, wherein she stated that she was about 15 years of age and made allegations against the appellant regarding her being taken away and subjected to sexual assault. The medical officer was also not examined by the prosecution.

7. On the other hand, the defence has not examined any oral or documentary evidence.

8. After hearing the parties and upon consideration of the evidence available on record, the learned Trial Court convicted the appellant and sentenced him in the manner indicated hereinabove.

9. Learned counsel for the appellant has assailed the judgment of conviction and order of sentence on several grounds. It is submitted that the victim, being the most material witness, was not examined during trial and, therefore, the appellant had no opportunity to cross-examine her regarding the allegations. It is further submitted that the medical officer was also not examined and there is no substantive medical evidence to corroborate the allegation of sexual assault. Learned counsel further submits that P.Ws.-1 and 2 were not eyewitnesses to the alleged occurrence and P.W.-3 has himself admitted that he had no personal knowledge of the occurrence. It is thus submitted that the impugned judgment of conviction and order of sentence



are bad in the eyes of law and fit to be quashed and set aside.

10. On the other hand, learned Additional Public Prosecutor has supported the judgment of conviction and submitted that the circumstances of disappearance and subsequent recovery of the victim, coupled with the evidence of her parents, the Investigating Officer and her statement recorded under Section 164 Cr.P.C., sufficiently establish the prosecution case and no interference with the conviction is warranted.

11. Having heard the parties and upon consideration of the material on record, this Court finds that the disappearance of the victim and her subsequent recovery from the village of the appellant are consistently supported by P.Ws.- 1 and 2 and are further corroborated by P.W.-4, the Investigating Officer. The parents of the victim have also consistently deposed regarding the disclosure made by the victim after her recovery.

12. It is true that the victim herself was not examined during trial and that her statement recorded under Section 164 Cr.P.C. cannot, by itself, be treated as substantive evidence of the occurrence. The medical officer has also not been examined. However, these circumstances have to be considered along with the remaining evidence on record and do not, in the facts of the present case, completely demolish the



prosecution case.

13. The evidence of P.Ws.-1 and 2 regarding the disappearance and subsequent recovery of the victim from the appellant's village has remained consistent. The Investigating Officer has also supported the circumstances relating to the investigation and recovery of the victim. On an overall consideration of the evidence, this Court does not find sufficient reason to interfere with the finding of conviction recorded by the learned Trial Court under Sections 366 and 376 of the Indian Penal Code.

14. So far as the question of sentence is concerned, the occurrence relates to the year 2010 and a considerable period has elapsed since then. Having regard to the facts and circumstances of the case, the period already undergone by the appellant in custody and the passage of time, this Court is of the view that the ends of justice would be met by modifying the sentence to the period already undergone by him and waving off the fine imposed by the learned Trial Court.

15. Accordingly, the judgment of conviction dated 05.01.2018 passed by the learned Presiding Officer, Fast Track Court No.2, Rohtas at Sasaram in Sessions Trial No. 134 of 2011 arising out of Dehri P.S. Case No. 05 of 2011 is hereby



affirmed. However, the order of sentence dated 06.01.2018 is modified to the extent that the substantive sentence of imprisonment imposed upon the appellant shall stand reduced to the period already undergone by him in custody and the fine imposed upon the appellant is hereby quashed.

16. In that view of the matter, appellant, above named, is discharged from the liability of his bail bonds in connection with this case.

17. Accordingly, this appeal stands disposed of.

18. Interlocutory application/s, if any, also stands disposed of.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	AFR
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