

BAIJ NATH SAH
v.
STATE OF BIHAR
(Criminal appeal No. 1475 of 2003)

APRIL 29, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

s.363 – Kidnapping – Four persons including appellant prosecuted – Conviction – Plea of appellant that there was no evidence against him – HELD: As the victim was not examined as a witness, her statement u/s 164 CrPC cannot be used against the appellant – Even otherwise, her statement does not involve the appellant in any manner – The allegation against him is that after the victim had been kidnapped by the other accused she was brought to their home, where the appellant was also present – In other words, when she was brought to the appellant's home, the kidnapping had already taken place – The appellant could, therefore, not be implicated in the offence punishable u/s 363 or 366-A de hors other evidence to show his involvement in the events preceding the kidnapping – Accordingly, appellant is acquitted – Code of Criminal Procedure, 1973 – s.164.

Code of Criminal Procedure, 1973:

s.164 – Statement recorded under – HELD: Is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-à-vis statement made in court – In other words, it can be utilised only as a previous statement and nothing more – Evidence – Penal Code, 1860 – s.363.

Ram Kishan Singh vs. Harmit Kaur and Anr. (1972) 3 SCC 280 – relied on.

A Case Law Reference:

(1972) 3 SCC 280 relied on para 4

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1475 of 2003.**

B From the Judgment & Order dated 25.4.2003 of the High Court of Judicature at Patna in Criminal Appeal No. 349 of 1991.

C Gaurav Aggarwal, Prashant Kumar for the Appellant.

Tanmaya Mehta, for the Respondent.

The following Order of the Court was delivered

ORDER

D Four persons in all Parwati Devi, Prabhunath Sah, Baij Nath Sah, the appellant herein, and one Surajdeo Misssir were brought to trial for an offence under Sec.366-A of the Indian Penal Code for having kidnapped Suman Kumari the minor daughter of Arjun Prasad on 24th June, 1984 from her home.
E The fourth accused i.e. Surajdeo Missir died during the course of the trial. The Trial Court by its judgment dated 5th September, 1991, convicted the accused for the aforesaid offence and sentenced them to five years rigorous imprisonment. An appeal was thereafter taken to the Patna High Court and the learned single Judge altered the conviction from one under Sec.366-A to Sec.363 of the IPC, released Parvati Devi on the basis of the sentence already undergone and reduced the sentence of the appellants Baij Nath Sah and Prabhunath Sah, to one year's R.I.

G A special leave petition was subsequently filed in this Court by Baij Nath Sah - the appellant and his brother Prabhunath Sah but as the latter did not surrender to custody, his special leave petition was dismissed. We are told that he
H has undergone the sentence as of now.

This appeal by special leave filed by Baij Nath Sah is before us. A

Mr. Gaurav Aggarwal, the learned counsel for the appellant has argued that there was no evidence whatsoever against the appellant herein. He has pointed out that his name had not figured in the FIR and that the only evidence used by the Courts below to convict the appellant was the statement under Sec.164 of the Cr.P.C. made by Suman Kumari before the Magistrate on the 25th July, 1984. He has further pointed out that this statement was inadmissible in evidence but even if taken into account did not involve or implicate the appellant in any manner. B C

Mr. Tanmay Mehta, the learned counsel appearing for the State of Bihar has however supported the judgment of the Trial Court and has submitted that in addition to the aforesaid statement the other evidence with regard to the involvement of the accused was also available on record. D

We have heard the learned counsel for the parties and have gone through the record. We see from the judgments of the Courts below that the only material that has been used against the appellant is the statement under Sec.164 of the Cr.P.C. This Court in *Ram Kishan Singh vs. Harmit Kaur and Another* ((1972) 3 SCC 280) has held that a statement of 164 Cr.P.C. is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-a-vis. statement made in Court. In other words, it can be only utilized only as a previous statement and nothing more. We see from the record that Suman Kumari was not produced as a witness as she had since been married in Nepal and her husband had refused to let her return to India for the evidence. In this light her statement under Section 164 cannot be used against the appellant. Even otherwise, a look at her statement does not involve the appellant in any manner. The allegation against him is that after she had been kidnapped by the other accused she had been brought to their home, where the appellant was also present. In other words, when she had been brought to the appellant's home the E F G H

A kidnapping had already taken place. The appellant could therefore not be implicated in the offence under Sec.363 or 366-A of the IPC de hors other evidence to show his involvement in the events preceding the kidnapping.

B We accordingly allow the appeal and set aside the judgment impugned. The appellant is acquitted.

The appellant is on bail. His bail bonds shall stand discharged.

R.P.

Appeal allowed.