

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.11 of 2014**

Arising Out of PS. Case No.-1456 Year-2007 Thana- KATIHAR COMPLAINT CASE District- Katihar

Mithun Singh S/O Bhudeo Singh Resident Of Village Kusaha, Police Station  
Azamnagar, District Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent

**Appearance :**

For the Appellant/s : Ms. Kirti Kumari, (Amicus Curiae)  
For the Respondent/s : Mr. Z.Hoda, APP.

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

**Date : -02-2026**

The instant appeal has been filed by the appellant against the judgment of conviction dated 02.11.2013 and order of sentence dated 07.11.2013 respectively passed by the court of Learned Additional Sessions Judge-II, Katihar in Sessions Trial No. 188 of 2010 arising out of Complaint Case No. 1456 of 2007. By the impugned judgment the appellant has been convicted for the offence punishable under section 376 of the Indian Penal Code (in short 'IPC'). By the impugned order of sentence he has been sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 376 of the IPC.

2. Here it is relevant to mention that the appellant and other two accused persons namely Bhudev Singh and Bhulia Devi were also charged for the offences punishable under section 313



and 504 read with section 34 of the IPC and they were acquitted of the said charged offences.

**Prosecution story**

3. The prosecution story appearing from the victim's complaint in brief is as follows:-

As per the victim (examined as PW-4) on 28.02.2007 her father had gone outside her village to earn livelihood and her mother had also gone to the house of her elder sister. On that day at about 5:00 PM the accused/appellant entered into her house and firstly inquired about her parents and when she told him that her parents were not in the house at that time then the appellant asked her to come to his house situated nearby the victim's house and when she refused to accept the request of the appellant then he (appellant) forcibly lifted her up but that act of the appellant was resisted by her after that the appellant started assaulting her by using fist and leg and also tied her mouth with towel and thereafter the appellant forcibly took her in his house, at that time the other accused, the parents of the appellant (now acquitted) were not present, thereafter, the appellant compelled her lie on the bed and removed her clothes and committed rape with her after making her nude. As per the victim, after commission of the rape the appellant asked her to flee away to her home then she started weeping and



thereafter the other co-accused reached there who also threatened her and made her wear her clothes and said her not to disclose the occurrence to anyone. Thereafter, when she started coming in weeping condition her neighbours came there and asked her about the occurrence and on that very day her parents also returned back to home in the night at 8:00 PM and finding her sleeping in disturbed position asked her about the occurrence then she told them about the occurrence. As per the victim/complainant in respect of the occurrence her father convened a panchayat meeting on 01.03.2007 in the evening at 4:00 PM in the village. In that panchayat meeting the appellant participated and accepted his wrong then the co-accused (appellant's parents) made a proposal to marry the victim with the appellant and also sought three months time to fulfill the said proposal that was given to the appellant. In the meantime, she became pregnant and on 24.5.2007 the accused finding her alone in her house persuaded her to come with them to their house and also took her on the pretext of curing her stomach pain and gave her some medicine which caused abortion to her. When her parents returned and saw her deteriorating health condition then she told them about the happening of abortion to her. After that her parents made a complain to the accused who said to them not to worry as the



appellant was going to marry the victim and everything would be well but thereafter the accused broke all relations with her family and also denied to marry her. Thereafter, on 10.06.2007 again a panchayat meeting was convened in the evening at 3:00 PM in which the appellant refused to marry her and thereafter at the advice given by the panches she firstly went to the police station where she was advised to go to the court and then she filed her complaint.

4. The victim-(PW-4) filed her complaint before the court of Chief Judicial Magistrate, Katihar on which the learned magistrate examined the complainant and her witnesses and took cognizance of the alleged offences and finding the main offence to be triable by the court of sessions committed the appellant's case to the court of sessions.

5. The appellant stood charged for the offences under sections 376, 313 and 504 read with section 34 of the IPC and other accused persons stood charged for the offences under sections 313 and 504 read with section 34 of the IPC. The charges were read over to the appellant and co-accused and explained to them in Hindi to which they denied and claimed to be tried for the charged offences.



6. Before the trial court the prosecution examined altogether following seven witnesses:-

PW-1	X (name of this witness has been withheld to conceal the identity of the victim)	the victim's father
PW-2	Gulo Devi @ Dulo Devi	She is said to be an eye witness of the occurrence
PW-3	Y (name of this witness has been withheld in order to conceal the identity of the victim.	Mother of the victim.
PW-4	Victim herself	
PW-5	Dr. Lakshmi Sen	Medically examined the victim.
PW-6	Ramani Singh	A witness of panchayat meeting
PW-7	Md. Ekramul Haque	A witness of the panchayat meeting.

7. In addition to the ocular evidence the prosecution proved and exhibited the following documents:-

Ext-X	Thumb impression of the victim on Ekrarnama
Ext-1	Signature of the appellant on the Ekrarnama identified by the victim.
Ext-2	Medical report of the victim
Ext-3	Agreement paper (Ekrarnama)
Ext-4	signature of the appellant and his father on the agreement paper

8. After completion of prosecution evidence the statement of the appellant was recorded by the trial court giving him an opportunity to explain the main incriminating circumstances appearing against him from the prosecution's evidences which were denied by him and he claimed himself to be



an innocent, however, he did not take any specific defence while recording his statement under Section 313 of the Code of Criminal Procedure.

9. The appellant examined three witnesses in his defence who were, DW-1, Suresh Prasad Singh, DW-2, Amaldeo Singh, and DW-3 Dilip Singh,

10. While convicting the appellant the trial court mainly placed reliance upon the evidence of the victim and PW-2, in respect of the alleged offence of rape and also placed reliance upon Ext-3 an Ekrarnama and victim's medical examination report. Though, the trial court acquitted the appellant and other accused persons from the charged offences under Sections 313, 504 read with section 34 of the IPC to the extent of victim's allegation as to she being pregnant on account of rape committed by the appellant and termination of the said pregnancy by the alleged act of the accused. Learned trial court took the Exhibit-1 and purported Ekrarnama of the appellant as being an admission of the appellant to his guilt in respect of alleged offences in the panchayat meeting.

**Submissions by learned Amicus Curiae**

11. Learned Amicus Curiae has submitted that the evidence of PW-4, the victim, is reliable and the same gets corroboration from the evidence of PW-2 who claimed herself to



be an eye witness of the occurrence. Further, the victim's allegation gets corroboration from her medical examination report to the extent of the victim becoming pregnant on account of rape committed with her. She further submits that as the appellant's house is situated near the house of the victim and both the houses have same courtyard and at the time of commission of the alleged offence of rape the victim's parents were not present in her house so taking advantage of that situation the appellant forcibly lifted the victim up and took her to his house and thereafter raped her. So far as the delay in filing the complaint by the victim is concerned, the same is not material, however, the main reasons for delay have been explained by the victim herself. One of the main reasons for the delay was the panchayat meetings having held in between both the parties and false assurance given by the appellant and his family members to marry the victim but that assurance was not fulfilled and when the victim found herself pregnant and later her pregnancy was forcibly terminated by the appellant and his family members then she had to take legal action by filing her complaint and the said circumstances are the reasons of delay in taking legal action against the appellant. Learned Amicus Curiae further submits that there is no illegality in the judgment of the trial court, however, she accepts that there are serious contradictions in the



victim's statements made by her in her complaint and her testimony before the trial court.

**Submissions on behalf of the APP**

12. On the other hand learned APP submits that at the time of commission of the alleged offences the victim was 14 years old and in this regard, medical expert's opinion is very important. As far as the commission of rape with the victim is concerned, the appellant himself accepted his wrong in the panchayat meeting which was proved before the learned trial court by the appellant's own undertaking given by him in the form of an affidavit and there was no reason for the victim to make a false allegation of rape against the appellant and she remained consistent to her allegations before the trial court.

**Consideration and analysis**

13. I have heard learned *amicus curiae* and learned APP for the State, perused the judgment impugned and the evidences available on the record of the trial court and also taken into account the appellant's statement.

14. In rape cases, the victim's testimony is considered to be a crucial piece of evidence and the same may be basis of conviction if it is credible and inspires confidence and the accused can be convicted solely on the victim's reliable statement but in



such case, the victim's testimony must be trustworthy and unshakable.

15. Now, I come to the present matter. As per the prosecution story described by the victim herself in her complaint, at the time of commission of rape, she was alone inside her home and her parents had gone outside the village. According to her, the appellant finding her alone in her house entered and forcibly lifted her up and took her in his house and during the course of taking her, she made her resistance but she was assaulted by the appellant by fist and legs. The narration of the incident made by the victim in her complaint does not show an eyewitness of the alleged occurrence in addition to the victim. According to the victim, her parents returned back to her home in the evening on the same day of the alleged occurrence at 8:00 P.M. and when after the occurrence she was going to her home in weeping condition, her neighbours also came there and inquired about the incident. In the light of this prosecution story narrated by the victim in her complaint, firstly, I would like to discuss the evidence of PW-2 as she appears to be an important witness of the prosecution. The witness is a co-villager of the appellant and victim and from her testimony, it does not appear that she is more familiar or having personal relation with any of the parties. The witness deposed in



the examination-in-chief that the alleged incident took place 2½ years ago and at the time of alleged occurrence she was in her home and upon hearing the cry, she went to the house of the appellant and saw the appellant committing rape with the victim and at that time the victim was nude and no cloth was on her body. If we believe this statement then it can be deemed that the PW-2 was the single person who witnessed the alleged crime of rape but the victim in her deposition before the trial court said nothing about coming of this witness at the alleged place at the time of commission of rape. Further, this witness deposed that she told the victim's parents about the occurrence when they returned to their home while as per the victim's parents' evidence, they got the information of the occurrence from the victim herself when they found her in weeping condition. The contradiction regarding the presence of PW-2 at the time of commission of rape gives a reason to draw the inference that the said witness was planted by the prosecution which raises a serious doubt in the prosecution's allegations. The victim stated in her complaint that when she was going to her home in weeping condition after the commission of rape, her neighbours came and asked her about the occurrence. But none of the said neighbours, except PW-2, was produced and examined by the prosecution even their names were not disclosed



by the victim. On the other hand, PW-2 deposed that except her no other person arrived at the place of occurrence. While the victim revealed in her complaint that she herself told her parents about the occurrence when they returned back to her home in the night at 8:00 P.M. but as per the PW-2, she informed the victim's parents about the occurrence. The said contradiction also creates a doubt in the prosecution story.

16. As per the evidence of victim and her parents, who were examined as PW-1, PW-3 and PW-4, after the incident, on 01.03.2007 in the evening at 4 PM a panchayat meeting was held by the victim's father in which the accused participated and the appellant accepted his wrong and his parents made a proposal to marry the victim to the appellant and sought three months time to fulfill their promise but in the meantime the victim found herself being pregnant and thereafter, on 24.05.2007 the accused finding her alone at her home persuaded her to come their home and when she went there they gave her some medicine on the pretext of relieving her from stomach pain but the said medicine caused abortion to her and later, a panchayat meeting was again held on 10.06.2007 by her parents in which the accused flatly refused to marry the victim with the appellant. If we believe this story then it would appear that two panchayat meetings took place in between



the appellant's family and the victim's family first, on 01.03.2007 and second, on 10.06.2007. As per the evidence of PW- 1, PW-3 and PW-4 (victim's parents and victim herself) in the said panchayat meeting the appellant accepted his wrong and he assured the victim and her family to marry the victim and in this regard, gave his written undertaking also. The prosecution brought the said undertaking on the record and got it exhibited as Exhibit-3 to prove the factum of panchayat meetings as well as the appellant's acceptance of his wrong and giving his own undertaking to marry the victim. From perusal of Exhibit-3, it appears that the said document contains signatures and thumb impression of several persons including the appellant, his father and others who are said to have participated in the panchayat meeting in the capacity of panches. The Exhibit-3 was prepared on a non judicial stamp paper and the same was attested by the Notary Public as appears from its perusal. But the attestation made by the Notary Public shows that the Exhibit-3 was attested on 08.01.2008 and signature of one panch was made with date and the same reveals the date of creation of so-called Ekrarnama by the appellant on 08.01.2008 while as per the prosecution story, the said panchayat meetings were held on 01.03.2007 and 10.06.2007. Thus, exhibit-3 was prepared several months after the so-claimed



panchayat meetings and prepared even after filing of the complaint. As the victim had lodged her case against the appellant and his parents, so, why the appellant and his father proceeded to give the said undertaking after the institution of the complaint case and in this regard, there is no proper explanation by the prosecution which goes against the reliability of said undertaking and victim's story and her allegations.

17. The learned trial court relied upon Exhibit-1 and Exhibit-3 as being an admission of the appellant to the wrong allegedly committed by him with the victim.

18. In the light of above discussed facts, I am of the opinion that the said approach of the trial court was not proper as firstly in the Exhibit-1 and Exhibit- 3 the appellant simply accepted a wrong having been committed by him but did not accept the commission of rape by him with the victim and the same does not come in the purview of extra judicial confession of the appellant. Moreover, PW-6 and PW-7 who made their signatures upon Exhibit-1 and Exhibit- 3 as witnesses were produced by the prosecution to prove the exhibits and their contents. But both the witnesses said nothing about the said admission of the appellant to the commission of rape by him with the victim. On the other hand, they revealed in their evidence that



5-6 months back a panchayat meeting was held in between the family members of both the parties in which the appellant became agree to marry the victim. Further, PW-6 stated in the cross-examination that the case was filed when the appellant did not become ready to marry the victim. The victim's father accepted in his evidence that he had a talk with the appellant in regard to the marriage of victim with him before the occurrence but the appellant was not agree for the same.

19. The appellant has taken the defence that victim's parents wanted to marry the victim with him and when they did not succeed they lodged the complaint case with a false story. In support of this defense, three witnesses were examined by the appellant who supported the defence of the appellant.

20. In view of the contents of the Ext.-3 as well as in the light of the evidence of victim's father, this Court finds no reason to disbelieve the appellant's said defence. As per the evidence of victim, PW-4, there is a common courtyard in between her house and the appellant's house where 8-9 persons oftenly remain. As per the allegation the appellant entered into the house of the victim and forcibly lifted her up and succeeded in taking her into his house despite victim's strong resistance. But it is not believable that without notice of anyone the appellant could have succeeded in



committing such alleged wrong. Though, PW-2 claimed herself to have come at the house of appellant upon hearing victim's cry and saw the victim in naked condition but for the reasons discussed above, her evidence is not reliable as the same does not get support from the victim's own evidence, this circumstance also creates a doubt in the prosecution's allegation.

21. As per the medical expert's evidence, who was examined as PW-5, the victim's pregnancy had been terminated twenty days before her examination. The victim was examined by the medical expert on 12.06.2007. Though the medical evidence goes in favour of the prosecution story to some extent but the prosecution did not succeed before the trial court to prove the victim's said pregnancy as being result of the sexual assault allegedly committed by the appellant with her on 28.02.2007. Furthermore, the charge for the offence under Section 313 of IPC framed upon the appellant was disbelieved by the trial court and he was acquitted of the said charged offence.

### **Conclusion**

22. For the reasons mentioned above, I find some strong circumstances discussed above going against the allegations levelled by the victim against the appellant and the victim does not appear to be sterling witness and her evidence does not get corroboration from the evidences of other witnesses. The appellant's



conviction for the offence under Section 376 of IPC is not sustainable on the victim's sole testimony and her evidence does not appear to be trustworthy and not inspire confidence of this Court. Accordingly, the trial court's judgement dated 02.11.2013 convicting the appellant for the offence punishable under section 376 of the IPC and the order dated 07.11.2013 sentencing the appellant for the said charged offence which have been impugned in this appeal are hereby set aside and the appeal stands allowed.

23. The appellant is presently on bail, accordingly, his bail bonds stand cancelled forthwith and he as well as his sureties are hereby discharged from their respective liabilities.

24. Ms. Kirti Kumari, learned Amicus Curiae shall be entitled to remuneration, as per notification dated 18.05.2017 issued by the State Government, to be paid by the Patna High Court Legal Services Committee for assisting this Court as Amicus Curiae.

25. Let the records of the trial court along with the copy of this judgement be sent forthwith to the trial court for compliance and doing needful.

siddharthkr/BKS

AFR/NAFR	AFR
CAV DATE	20.01.2026
Uploading Date	03.02.2026
Transmission Date	03.02.2026

**(Shailendra Singh, J)**

