

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.167 of 2014

Arising Out of PS. Case No.-329 Year-2012 Thana- KHAGARIA District- Khagaria

Dheeraj Sahni S/O Dinesh Sahni Resident of Village South Bhadas, P.S.
Muffasil, District Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rudra Pratap Singh, Amicus Curiae. .
For the Respondent/s : Mr. Binod Bihari Singh, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 07-05-2026

Heard Mr. Rudra Pratap Singh, learned *Amicus Curiae* and Mr. Binod Bihari Singh, learned APP for the State.

2. The appellant has preferred the present appeal under Section 374(2) of the Code of Criminal Procedure challenging the judgment of conviction dated 11.02.2014 and order of sentence dated 14.02.2014 passed by the learned Additional District and Sessions Judge-I, Khagaria in Sessions Case No. 342/2012, arising out of Khagaria (Muffasil) P.S. Case No. 329 of 2012, whereby and whereunder, the appellant has been convicted for the offence punishable under Section 376/511 of the Indian Penal Code and has been sentenced to



undergo rigorous imprisonment for five years and Rs. 5000/- fine and in default of payment of fine, to undergo rigorous imprisonment for three months and the amount of fine shall be paid to the mother of the victim.

BRIEF FACTS OF THE CASE

3. The prosecution story, in brief, is that the informant Pinki Devi, wife of Hare Ram Sahni, submitted a written report before the Superintendent of Police, Khagaria, on 30.06.2012, wherein she categorically alleged that on 29.06.2012 at about 1:00 p.m., while her daughters, namely Deepika Kumari, aged about 5 years, and Daizy Kumari, aged about 4 years, were playing in front of the house of Dinesh Sahni. The appellant who is son of Dinesh Sahni, allegedly lured the victim Deepika Kumari on the pretext of giving money and then took the victim along with her younger sister Daizy Kumari inside the room and committed rape upon her. On hearing the cry of her daughter, the informant rushed to the house and allegedly witnessed the accused through a window committing rape upon the victim. However, upon raising an alarm, the accused fled away through the roof. It is further alleged that the informant found her daughter lying naked, with dust on her body. Thereafter, the informant took her daughter (the victim). Subsequently, she



went to the Police Station, where she was advised to approach the Sarpanch for redressal of her grievance. She approached the Sarpanch of the Gram Katchahari who did not meet her. On the basis of the written report filed by the informant before the Superintendent of Police, Khagaria, Khagaria (Mufassil) P.S. Case No. 329 of 2012 was lodged on 30.06.2012 under Section 376 of the I.P.C. against the sole accused, appellant hereof. After institution of the F.I.R., the Investigating Officer conducted investigation and found the case to be true under Section 376 of the I.P.C., and accordingly submitted charge-sheet before the learned court below. Thereafter, the learned Magistrate, upon perusal of the materials on record, took cognizance of the alleged offence on 10.09.2012, and the case was subsequently committed to the Court of Sessions on 01.11.2012. Pursuant to the conclusion of the trial, impugned judgment was passed.

ARGUMENT ON BEHALF OF *AMICUS CURIAE*

4. Learned *Amicus Curiae*, submitted that the testimony of Prosecution Witness No. 7, the informant, is not reliable and does not inspire confidence, so as, to sustain the conviction in the absence of independent corroboration. It was contended that the entire prosecution case rests upon her sole testimony and single identification. The informant is an



interested witness, being the *chachi* of the appellant and they reside in the same house with a common courtyard giving rise to the possibility of prior animosity or ulterior motive, which the prosecution has failed to dispel. Learned counsel drew the attention of this Court to paragraph 22 of the case diary and submitted that, as per the description therein, the alleged place of occurrence had no door or window; however, PW-7 in her examination-in-chief deposed that the door was closed from inside and that she witnessed the occurrence by peeping through a window and thereafter instructed her younger daughter aged about 4 years to open the door. This material contradiction, it was urged, strikes at the root of the prosecution case and renders her version inherently unreliable.

5. It was further submitted that the testimony of PW-7 suffers from serious improbabilities, inasmuch as her claim of having witnessed the occurrence through a window appears doubtful. It is contended that, instead of raising an alarm and calling other family members, the informant allegedly instructed her minor daughter to open the door, who was unable to reach the bolt to unlock it. Moreover, the fact that the Investigating Officer did not find any such door at the place of occurrence renders the entire version unnatural and improbable.



6. Learned counsel further submitted that the condition of the victim, as described by PW-7, finds no corroboration from the medical evidence, which assumes significant importance in a case of this nature. It was also urged that the statement of the victim under Section 164 Cr.P.C. was not recorded, and, more importantly, the victim child, in her deposition before the learned trial court, did not support the prosecution case and categorically stated that no wrongful act had been committed against her. The victim further failed to identify the appellant, who is admittedly her own cousin brother, thereby creating a serious dent in the prosecution case.

7. In view of the aforesaid material contradictions, inherent improbabilities, absence of medical corroboration, and the failure of the victim to support the prosecution case, learned counsel submitted that the testimony of PW-7 cannot be said to be of sterling quality so as to form the sole basis of conviction. It was thus urged that the prosecution has failed to establish the charge beyond reasonable doubt and the appellants are entitled to the benefit of doubt.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing on behalf of the State while opposing the appeal submitted that the learned



District court, after considering all the evidences, both oral and documentary, adduced during the course of trial, has committed no error, either of fact or of law, in recording the conviction of the appellant on the basis of cogent and reliable material on record, warranting no interference by this Court.

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.

PROVISION OF LAW

11. Before I proceed to analyze the evidences in support of the allegation both oral i.e. direct evidence what the witnesses personally said, heard or perceived and the documentary evidences, both primary and secondary evidences which needs consideration to decide the appeal, I find it gainful to reproduce the provisions of Sections 375, 376 and 511 of the Indian Penal Code, which are as under:-

375. Rape.— A man is said to commit "rape" if he—(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or



(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.



Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

376. Punishment for rape.— (1) *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]*

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.— *Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.*
Illustrations

(a) *A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.*

(b) *A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.”*

STATEMENT RECORDED UNDER SECTION 164 CR.P.C. AND ITS RETRACTION DURING THE COURSE OF TRIAL

12. The law in this regard is well settled by the Apex Court in the case of *Vijaya Singh & Anr. v State of Uttarakhand* reported in **2024 INSC 905**, that the statement under Section 164 Cr.P.C. can not be discarded, which finds



reference in Paragraph No.31, which is reproduced *inter alia* hereinafter :

“31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.”

13. In the case of ***State of Rajasthan v. Om Prakash reported in (2002) 7 SCC 745*** the Apex Court sounded a warning against offences of sexual nature against children, in the following terms in Paragraph no.19, which *inter alia* is reproduced as under:

“19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position



and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted...”

14. In case of ***Pradeep v. State of Haryana*** reported in ***(2023) SCC OnLine SC 777***, it was held that the role of the trial Judge, when a case involves a child witness, becomes heightened. The Apex Court held as under :

“10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.”

15. In case of ***Hemudan Nanbha Gadhvi v. State of Gujarat***, reported in, ***(2019) 17 SCC 523***, the Apex Court held that a nine year old prosecutrix turning hostile would not be fatal blow to the prosecution case when other evidence can establish the guilt of the accused.

16. In case of ***Ganesan v. State***, reported in, ***(2020) 10 SCC 573***, held that the sole testimony of the victim, if found



reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused also the reliance has correctly been placed upon the said statements by the courts below, the Court observed.

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

- 1) PW-1 Leela Devi (Co - Villager)
- 2) PW-2 Mahesh Tanti, (Co - Villager)
- 3) PW-3 Dilip Kumar Tanti (Co - Villager)
- 4) PW-4 Hare Ram Sahni, father of the victim
- 5) PW-5 Deepika Kumari (victim)
- 6) PW-6 Dr. Manju Kumari (Doctor)
- 7) PW-7 Pinki Devi (informant)
- 8) PW-8 Rajpati Devi (Co – Villager)
- 9) PW-9 Dasrath Yadav (Co – Villager)

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

- (i) Exhibit- 2- Medical Report
- (ii) Exhibit-2/1- Pathology Report

19. On the basis of materials surfaced during the trial, the appellant/accused Upon a meticulous examination of the record, it appears that the PW-1, PW-2 and PW-3 turned hostile and the evidence of other prosecution witnesses (PWs) are summarized as follows:

(I) P.W. 4 - Hare Ram Sahni, the father of the victim, establishes that upon hearing an alarm (*halla*), he



proceeded to the appellant's door where he observed his daughter in a nude state. He admitted in his cross-examination that the appellant is his cousin-nephew and that they share the same courtyard. Crucially, he conceded that no physical injuries were found on the victim's body and clarified that his understanding of the alleged assault was based entirely on the account provided by his wife.

(II) **P.W. 5, Deepika Kumari**, the victim, stated that she is aged about five years, but notably turned hostile to the prosecution's case. In her testimony before the court, she categorically denied the allegations set forth by her mother and stated that no rape had been committed upon her. Furthermore, she failed to identify the appellant.

(III) **P.W. 6, Dr. Manju Kumari**, - She deposed that she conducted the physical examination of the victim. She did not find any external injury on the victim's body. She confirmed that there was no medical sign or traumatic indicator of rape found in the private parts of the victim.

(IV) **P.W. 7, Pinki Devi**, the informant and mother of the victim, remained consistent with her initial version of the incident as alleged in the F.I.R. She maintained in her testimony that she was the sole eyewitness to the occurrence. However, it



was noted that she did not disclose the existence of any land dispute between her family and the accused during her deposition.

(V) **P.W. 8, Rajpati Devi**, - She serves as hearsay evidence regarding the immediate aftermath of the incident. She stated that she rushed to the spot upon hearing the cries of P.W. 7 and was informed by the informant at the scene that a rape had been committed upon the child.

(VI) **P.W. 9, Dashrath Yadav**, testified as a formal witness. While he successfully proved his signature on the F.I.R., he did not provide any substantive evidence regarding the commission of the alleged offense or the involvement of the appellant.

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

21. The record reveals that PW-1, PW-2 and PW-3, were declared hostile during the trial as they did not support the prosecution case on material particulars, and nothing substantive transpired from their testimonies which could be



said to corroborate or lend assurance to the version of the other prosecution witnesses. Their evidence does not advance the prosecution case with regard to the allegations of dowry demand, cruelty, or the alleged disappearance of the deceased. Therefore, the testimonies of these witnesses are not relevant qua establishing the guilt of the accused/appellants.

22. On a careful perusal of the evidence, facts, and law, it emerges that the prosecution case suffers from serious infirmities and lacks the degree of proof required to sustain conviction. P.Ws. 1, 2, and 3 have admittedly turned hostile and have not supported the prosecution case in any manner. P.W. 4, the father of the victim, is not an eyewitness and has clearly deposed that his knowledge regarding the alleged occurrence is based solely on what was narrated to him by his wife (P.W. 7); he has further admitted that no injury was found on the body of the victim and that the parties are closely related, residing in the same premises with a common courtyard. P.W. 5, the victim herself, who is the most material witness, has turned hostile and categorically denied the allegation of rape and has even failed to identify the appellant in Court, thereby striking at the very root of the prosecution case. The medical evidence, as deposed by P.W. 6, does not support the prosecution version, as no external



or internal injury or any sign suggestive of sexual assault was found on the victim. P.W. 8 is merely a hearsay witness, having reached the place of occurrence after the alleged incident and having derived knowledge only from the informant, while P.W. 9 is a formal witness who has only proved the formal aspects of the case. Thus, the entire prosecution case essentially rests upon the sole testimony of P.W. 7, the informant, whose version, as discussed, suffers from material contradictions, inherent improbabilities, and lack of corroboration from both ocular and medical evidence. In such circumstances, where the star witness (victim) has not supported the case, the medical evidence does not corroborate the allegations, and the independent witnesses have turned hostile, it would be unsafe to base the conviction solely on the testimony of P.W. 7.

23. In the present case, the most crucial aspect, namely, the statement of the victim, does not advance the prosecution case, rather, it creates a serious dent in it. It is an admitted position on record that the statement of the victim under Section 164 Cr.P.C. was not recorded at all, thereby depriving the prosecution of a vital piece of substantive corroborative evidence ordinarily relied upon in cases of this nature. Further, when the victim herself entered the witness box



as P.W. 5 before the learned trial court, she did not support the prosecution version and categorically denied that any such occurrence had taken place. She also failed to identify the appellant, who is admittedly her close relative, thereby rendering the prosecution story highly doubtful. In the absence of a statement under Section 164 Cr.P.C., coupled with the victim turning hostile in court, the evidentiary foundation of the prosecution case stands considerably weakened, and no reliance can safely be placed on the uncorroborated testimony of the informant (P.W. 7) to sustain the conviction.

24. The primary challenge in the present appeal lies in the fact that the material prosecution witnesses, including the victim (P.W. 5) and other independent witnesses, have not supported the prosecution case and have been declared hostile during trial. While it is a settled principle of law that the testimony of a hostile witness is not to be discarded in total and that the Court may rely upon such portions of the evidence which find corroboration from other reliable material on record, the said principle does not aid the prosecution in the facts of the present case. Significantly, the statement of the victim under Section 164 Cr.P.C., which could have lent some degree of assurance to the prosecution version, was admittedly not



recorded. In such a situation, there remains no prior consistent statement of the victim before a judicial authority which could be used even for the limited purpose of corroboration. On the contrary, the victim, in her deposition before the learned trial court, has categorically denied the occurrence and has not supported the allegations levelled against the appellant. In the absence of any substantive or corroborative material, and particularly when the star witness has resiled from the prosecution case, the evidentiary foundation becomes too fragile to sustain conviction.

25. Further, it is evident from the medical evidence on record that the same does not provide any unimpeachable scientific support to the prosecution case so as to bridge the gaps created by the hostility of the witnesses. On the contrary, P.W. 6, the doctor who examined the victim, has categorically deposed that "*no external injury was found on the body of the victim and there were no signs or indicators suggestive of rape on her private parts.*" The medical findings, thus, do not disclose any evidence of recent sexual assault or penetration. In such circumstances, where the medical evidence fails to corroborate the ocular version and does not indicate any genital injury or trauma, the evidentiary chain stands seriously



weakened. In absence of any supportive medical findings, coupled with the victim turning hostile and denying the occurrence, it cannot be said that the prosecution has been able to establish its case through reliable scientific or medical evidence.

26. In the case of *Sadashiv Ramrao Hadbe v. State of Maharashtra*, reported in *(2006) 10 SCC 92*, the Hon'ble Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

27. Applying the aforesaid settled principles of law to the facts of the present case, and bearing in mind that material contradictions between the version of the informant as set out in the F.I.R. and her deposition before the Court render her testimony unreliable, this Court finds that the prosecution case does not inspire confidence. In the present matter, not only has the victim failed to support the allegations during trial and even failed to identify the appellant, but the sole testimony of the



informant (P.W. 7) also suffers from material inconsistencies and inherent improbabilities. Further, the medical evidence, as deposed by the doctor (P.W. 6), clearly indicates absence of any injury or sign suggestive of sexual assault and does not corroborate the prosecution version. In such circumstances, where the ocular testimony is inconsistent and stands uncorroborated by medical evidence, the prosecution has failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt and the conviction cannot be sustained.

28. Accordingly, this Court finds that the impugned judgment of conviction dated 11.02.2014 and order of sentence dated 14.02.2014 passed by the learned Additional District and Sessions Judge-I, Khagaria in Sessions Case No. 342/2012, arising out of Khagaria (Muffasil) P.S. Case No. 329 of 2012, whereby, the appellant has been convicted under Section 376/511 of the Indian Penal Code, is hereby set aside.

29. Accordingly, the present appeal stands allowed.

30. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand) to Mr. Rudra Pratap Singh, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable



professional service for disposal of the present appeal.

31. 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)

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AFR/NAFR	
CAV DATE	24.04.2026
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