

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.261 of 2013**

Arising Out of PS. Case No.-249 Year-2011 Thana- SAUR BAZAR District- Saharsa

1. Shankar Singh S/O Pradeep Narain Singh Resident Of Village- Dhanchhoha, P.S.- Saur Bazar, District- Saharsa.
2. Raju @ Rupesh Singh S/O Naresh Singh @ Naresh Pd. Singh Resident Of Village- Arraha Mahuwa, P.S.- Ghelarh, District- Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Sarandha Suman, *Amicus Curiae*
For the Respondent/s : Mr. S.N. Pd., A.P.P.

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

Date : 01-07-2026

Heard Ms. Sarandha Suman, learned *Amicus Curiae* for the appellants and Mr. S.N. Prasad, learned APP for the State through 'Virtual Hybrid Mode'.

2. The appellants have preferred the present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure challenging the judgment dated 01.04.2013 and order of sentence dated 04.04.2013 passed in Sessions Trial No. 187 of 2012 arising out of Saur Bazar P.S. Case No. 249 of 2011 by Adhoc Additional Sessions Judge- 1st, Saharsa, whereby and whereunder, the appellants have been convicted for the offence punishable under Sections 366-A/34 and 376/34 of the Indian Penal Code and have 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 six months under Section 366-A/34 IPC and to undergo rigorous imprisonment for ten years and Rs. 5,000/- fine and in default of payment of fine, to undergo rigorous imprisonment for six months under Sections 376/34 of the IPC. Both the sentences were directed to run concurrently.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants.

BRIEF FACTS OF THE CASE

4. The case of the prosecution, in brief, is that The informant who is the father of the victim has alleged that on 12.09.2011 at around 10:00 a.m., his daughter aged about 14 years along with one Doli Kumari went to school. She kept her books on the desk and went to the shop of Janardan Ram with one Shabnam Praveen to get some chocolates. While returning to school, when she reached near Voda's Tower towards north of



the shop, Chandan Kumar, Munna Kumar and 3-4 unknown persons called her and locked her in the room constructed in the tower. Doli Kumari after school went to her house and informed the informant that the victim was not in the school. Informant went for her search and found from Bhushan Yadav that she was seen going inside the tower. When the informant reached there the room was locked. It is alleged that the room of the tower is the shelter for criminals and Chandan Kumar is anti-social element and has committed such type of offences several times.

ARGUMENT ON BEHALF OF *Amicus Curiae*

5. Learned *Amicus Curiae* submitted that the conviction of the appellants under Sections 366-A/34 and 376/34 IPC is wholly unsustainable in law as there is no specific allegation either in the FIR or in the evidence of the prosecutrix attributing any act of kidnapping, inducement or rape to the present appellants. The prosecution case, from its very inception, is directed against Chandan Kumar and Munna Kumar, who were alleged to have followed the victim near the tower and forcibly took her away. The prosecutrix (PW-7) specifically stated that Chandan Kumar committed rape upon her and has not alleged that any act of sexual assault was committed by the appellants. In the absence of any overt act or



direct participation on the part of the appellants, their conviction merely on the basis of their alleged subsequent participation with the co-accused Chandan Kumar and, as such, in absence of any direct allegation, the learned trial Court erred in convicting the appellants.

6. It is further case of appellants that the learned Trial Court erroneously invoked Section 34 IPC without there being any evidence of prior meeting of minds or common intention shared by the appellants with the co-accused. The prosecution has failed to establish that the appellants had participated in the alleged kidnapping, confinement or commission of rape, or that they had knowledge of any such criminal design. Significantly, the learned trial Court itself recorded a finding that the prosecution has failed to prove any conspiracy amongst the accused persons. Once conspiracy and pre-arranged plan were not proved, mere presence of the appellants in a vehicle, as alleged by the prosecutrix, could not legally lead to an inference that they shared the common intention to commit offences under Sections 366-A and 376 IPC. The conviction, therefore, rests on presumptions and conjectures rather than on cogent evidence.

7. Learned *Amicus Curiae*, submitted that the prosecution case suffers from serious infirmities and



deficiencies in investigation which create substantial doubt regarding the involvement of the appellants. The Investigating Officer admitted that he neither visited the alleged hotel at Banmankhi, nor examined any hotel employee, driver of the vehicle, or any independent witness from Banmankhi or Madhepura. No vehicle number was traced and no material evidence connecting the appellants with the alleged offences was collected during investigation. In such circumstances, when the entire evidence against the appellants is limited to an uncorroborated allegation of their presence in a vehicle, the prosecution cannot be said to have proved its case beyond reasonable doubt. Consequently, the appellants are entitled to the benefit of doubt and the judgment of conviction and order of sentence deserve 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 rightly convicted the appellants for said offences.

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. It would be appropriate to reproduce the provisions of Sections 366(A) and 376 of the IPC for the sake of convenience and better understanding of the facts, which are as under:-

“366A. Procuration of minor girl.—

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

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](Subs. by Act 22 of 2018, s. 4, for “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine” (w.e.f. 21-4-2018)

(2)Whoever,—

(a)being a police officer, commits rape—

(i)within the limits of the police station to which such police officer is appointed; or

(ii)in the premises of any station house; or(

iii)on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b)being a public servant, commits rape on a



woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c)being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d)being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f)being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g)commits rape during communal or sectarian violence; or

(h)commits rape on a woman knowing her to be pregnant; or

(i)commits rape on a woman when she is under sixteen years of age; or

(j)commits rape, on a woman incapable of giving consent; or

(k)being in a position of control or dominance over a woman, commits rape on such woman; or

(l)commits rape on a woman suffering from mental or physical disability; or

(m)while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n)commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.— For the purposes of this sub-



section, —

(a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b)"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c)"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d)"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3)Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:Provided further that any fine imposed under this sub-section shall be paid to the victim"

12. 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.

13. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment dated 01.04.2013 and order of sentence dated 04.04.2013 for the offences under Sections 366-A/34 and 376/34 of the IPC.

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

1. P.W.1 – Dr. Bibha Rani (Doctor who examined the Victim)

2.P.W.2 – Sunil Kumar Bhagat (S.I.)

3.P.W.3 – Ram Milan Kumar (Hearsay Witness)

4. P.W.4 – Raj Kishore Yadav (Hearsay Witness)

5. P.W.5- Dinesh Yadav (Informant)

P.W.6 - Chandra Bhushan Kumar (Hearsay Witness)

P.W.7- Babita Kumari (Victim)

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

(i) Ext.1 – Medical Report

(ii) Ext.2 – Forwarding on Written Report

(iii) Ext.3 – Charge-Sheet



(iv) Ext.3/1- Signature of the informant on Charge Sheet

(v) Ext. 4 - Formal F.I.R.

(vi) Ext. 5 – Signature of the informant on the Written Report

(vii) Ext. 5/1- Signature of Parmanand Yadav on the Written Report which was identified by P.W. 5

(viii) Ext. 6- Statement of the victim under Section 164 Cr.P.C.

16. From the perusal of records, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

P.W.1 – Dr. Bibha Rani-Examined the victim on 14-09-2011 at Sadar Hospital, Saharsa. Found her height 4’-11”, weight 40 kg, with a wound scar on the right side of her face. Breast well developed, axillary and pubic hair present, no external injury on the body. Per vaginal examination showed hymen not intact, with slight erosion on the posterior vaginal wall but no visible external injury. Pathological examination of the vaginal swab showed no spermatozoa, with 3-4 epithelial cells/HPF and 2-3 pus cells/HPF. Radiological examination assessed her age between 14-16 years. She opined there was



confirmatory evidence of sexual intercourse. In cross-examination, she admitted that measurements of breast size and colour of pubic/vaginal hair were not mentioned in her report, though she maintained these were not essential for age assessment.

P.W.2 – S.I. Sunil Kumar Bhagat (Investigating Officer) Posted at Baijnathpur O.P. on 13-09-2011 when the informant Dinesh Yadav submitted his written petition, which was forwarded to Saur Bazar P.S. (Ext.2). He visited village Khajuri and investigated, recording statements of the informant and witnesses. On receiving information, he went to Madhepura where Madhepura Police handed over the victim and accused Chandan Kumar to him. He recorded the victim's statement, sent her for medical examination, and arranged recording of her statement under Section 164 Cr.P.C. He submitted the charge-sheet (Ext.3) and the formal F.I.R. (Ext.4). In cross-examination, he conceded he did not record statements of witnesses from the hotel in Banmankhi, did not note the vehicle number used to transport the victim, and did not record statements of witnesses present when the victim was apprehended at Madhepura — lapses the trial court treated as investigative deficiencies not fatal to the prosecution case.



P.W.5 – Dinesh Yadav (Informant/Father of victim)

Deposed that on 12-09-2011 at about 10 A.M. his daughter Babita Kumari, aged about 14 years, went to school and later to purchase a pen, and while returning was caught near the tower by accused Chandan Yadav and Munna Kumar and locked in a room there. She was later brought to Banmankhi at night, where she was raped at a hotel; thereafter the accused were arrested, though Shankar Singh and Raju Singh fled from Madhepura. He identified his written petition (Ext.5) and the signature of Parmanand Yadav (Ext.5/1). In cross-examination, he admitted he had no opportunity to speak with his daughter between her kidnapping and recovery, and that his statement was based on presumption. He denied the defence's suggestion that he gave his statement to police on 13-09-2011 at 6 P.M., asserting instead that he submitted his petition around 8-9 P.M. that day. He denied any prior enmity with the accused, a suggestion the defence failed to substantiate with evidence.

P.W.6 – He has deposed that on 12.09.2011 at about 10:00 A.M., he saw the victim, Babita Kumari, taking a pen from a shop when accused Chandan Kumar and Munna Kumar forcibly dragged her away. Thereafter, he left the place. On the following day, i.e., 13.09.2011, he came to know that Babita



Kumari had been kidnapped and recovered. According to him, when he met the victim, she disclosed that accused Chandan Kumar, Munna Kumar, Raju Kumar and Shankar Singh had taken her to Banmankhi, kept her in a hotel and committed rape upon her. He further stated that Chandan Kumar was apprehended at Madhepura, whereas Munna Kumar and Raju Kumar had fled away. He identified the victim as well as the accused persons present in Court.

In cross-examination, the witness admitted that his statement was recorded by the police on 13.09.2011 at about 6:45 P.M. He further admitted that at the time of giving such statement he had neither met the victim nor visited Madhepura. He stated that he had earlier deposed before the Court on 04.08.2012 and denied having stated therein that the victim had disclosed the names of all four accused, that she had been taken to Banmankhi and raped, or that she had been kept in a hotel at Banmankhi for 3–4 days. He further stated that he reached Madhepura at about 9:00 P.M. on 13.09.2011 and denied having previously stated that he had reached there at 6:00 P.M. The witness admitted that he had known both the accused persons for about five years and, therefore, could identify them. He denied the defence suggestion that he had never gone to



Madhepura, that no such occurrence had taken place, or that he was deposing falsely.

P.W.7 – Babita Kumari (Victim) has Deposed that on 12-09-2011 at about 10 A.M. she went to school, then to purchase a pen, and while returning near the tower was caught by Munna Kumar and Chandan Kumar, who locked her in the tower and made her inhale something, causing her to lose consciousness. She was brought to Banmankhi at night and kept in a hotel, regaining consciousness around 12-1 A.M. She clearly stated that Chandan Kumar raped her. On 13-09-2011 around 1:30-2:00 P.M., three persons — Shankar Singh, Raju Singh, and Munna Kumar — arrived by vehicle and threatened her en route while transporting her to Madhepura. On sighting the police, the three fled; she and Chandan Kumar were apprehended. She was sent to Baijnathpur O.P. via Madhepura Police, then to Saur Bazar P.S., medically examined on 14-09-2011, and her statement recorded under Section 164 Cr.P.C. on 15-09-2011 (Ext.6).

In cross-examination, she stated she did not know the hotel's name (being unconscious when booked in), could not describe its boundary or give the vehicle's number or driver's name, but specifically recalled sitting on the middle seat and



that her mouth was kept closed, preventing her from raising an alarm. She stated the vehicle was parked at Madhepura, that the three accused fled leaving her with Chandan Kumar, and that police then caught them. She confirmed both accused (Shankar Singh and Raju Singh) were known to her, that her father was present when she gave her statement, and that she deposed of her own free will. She denied no incriminating article was recovered from the vehicle. She firmly denied the defence's suggestions that no occurrence took place, that she was never taken to Madhepura, and that she had a love affair with Chandan Kumar with both intending to marry at Singheshwar Temple before being apprehended denying that the accused were falsely implicated.

17. A careful reading of the testimony of P.W.7 (Babita Kumari), the victim herself, makes it evident that the specific allegation of rape has been attributed solely to co-convict Chandan Kumar. In her examination-in-chief, she categorically stated that after being taken to Banmankhi and kept in a hotel, "Chandan Kumar committed rape upon her." Significantly, no allegation has been levelled by the victim that either of the present appellants, namely Shankar Singh and Raju Singh, subjected her to any act constituting rape or participated



in the commission thereof. The role assigned to the appellants is confined to their alleged presence on 13.09.2011, when they, along with Munna Kumar, are stated to have arrived in a vehicle and transported the victim from Banmankhi to Madhepura. Even in her cross-examination, the victim consistently maintained that Chandan Kumar alone remained with her when the police apprehended them, while the other three persons allegedly fled away. Thus, the prosecutrix has not attributed any overt act of sexual assault to the present appellants. In the absence of any specific allegation, cogent evidence, or material demonstrating their participation in the alleged act of rape, the essential ingredients of the offence punishable under Section 376 of the Indian Penal Code are not established against the present appellants. Merely because the appellants are alleged to have accompanied or assisted the principal accused at a subsequent stage would not, by itself, be sufficient to attract liability under Section 376 IPC, particularly when the prosecutrix has consistently attributed the act of rape exclusively to Chandan Kumar. Consequently, the conviction of the present appellants for the offence under Section 376 IPC cannot be sustained on the basis of the evidence available on record.



18. For establishing common intention, the prosecution is required to prove, firstly, a prior meeting of minds or a pre-arranged plan; secondly, active participation indicating that the appellants, Raju Singh and Shankar Singh, shared the common intention to commit the alleged offences of kidnapping and rape; or thirdly, circumstances demonstrating that they had knowledge of and consciously joined the criminal venture from its very inception. Upon a careful consideration of the evidence on record, I find that the victim's own testimony establishes that the alleged rape was committed by co-accused Chandan Kumar and that she was initially kidnapped by Munna Kumar and Chandan Kumar. There is no allegation whatsoever against the present appellants that they committed rape upon the victim. Further, the materials available on record do not disclose any circumstance from which it can be inferred that the appellants had, from the very beginning, shared a common intention with co-accused Chandan Kumar and Munna Kumar either to kidnap the victim or to commit rape upon her. In the absence of any evidence of prior concert, pre-arranged plan, or active participation in the commission of the offence from its inception, the essential ingredients necessary to attract the principle of common intention are not established against the



present appellants.

19. The case of the prosecution against the appellants is that of having participated in the alleged commission of rape with the victim P.W.-7 by having conspired to kidnap the victim and commit rape.

20. The Hon'ble Supreme Court has consciously held that common intention cannot be inferred merely from presence, association, or subsequent conduct unless participation and shared intention are proved beyond reasonable doubt. It is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused.

21. In case of ***Krishnan v. State of Kerala***, reported in ***(1996) 10 SCC 508***, the Hon'ble Supreme court has held as under:

15. Question is whether it is obligatory on the part of the prosecution to establish commission of an overt act to press into service Section 34 of the Penal Code. It is no doubt true that the court likes to know about an overt act to decide whether the person concerned had shared the



common intention in question. Question is whether an overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when “a criminal act is done by several persons in furtherance of the common intention of all”. What has to be, therefore, established by the prosecution is that all the persons concerned had shared the common intention. Court's mind regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention: res ipsa loquitur.

22. In case of ***Jasdeep Singh v. State of Punjab***, reported in (2022) 2 SCC 545, the Hon’ble Supreme court has held as under:

“20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal



scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis."

23. The aforesaid judgment was reiterated by the Apex Court in case of ***Constable 907 Surendra Singh & Anr. Versus State Of Uttarakhand*** reported in (2025) INSC 114.

24. What emerges from the aforesaid legal principles that the statement of the victim may be treated as a "sterling witness" and her testimony can be relied upon without additional corroboration, provided its quality and credibility are of an exceptionally high standard. The statement of the prosecutrix should remain consistent throughout, from the initial



version to the oral evidence, barring minor discrepancies, and should not give rise to any doubt regarding the prosecution's case. Although, in cases of sexual offences, the testimony of the victim is generally sufficient, a version that is unreliable or inadequate, suffering from evident shortcomings and gaps, may render it difficult to sustain a conviction.

25. From the above admitted facts, I find that no case under Section 376 is made out against the appellants in absence of any allegation made by the P.W.-7 (victim).

26. I find that the learned trial Court has erred in arriving to conclude that the appellants namely, Shankar Singh and Raju @ Rupesh Singh had the similar intention like the accused Chandan Kumar and Munna Kumar, who had actively participated in the kidnapping of the victim in absence of their presence at the place of occurrence and had committed rape cannot be sustained. I am of the opinion that the trial court has erred in convicting the appellants under Sections 376/34 of the Indian Penal Code, as such, the impugned judgment is liable to be quashed and set aside.

27. The impugned judgment dated 01.04.2013 and order of sentence dated 04.04.2013 passed in Sessions Trial No. 187 of 2012 arising out of Saur Bazar P.S. Case No. 249 of 2011



by Adhoc Additional Sessions Judge- 1st, Saharsa, is hereby quashed and set aside. Consequently, the above-named appellants/accused are acquitted from all the charges levelled against them. Since the appellants are on bail, as such, they are discharged from the liability of their bail bonds. The fine deposited by the appellants, if any, shall be refunded to them.

28. Accordingly, the present appeal is allowed.

29. The Patna High Court Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand) to Ms. Sarandha Suman, learned *Amicus Curiae*, as consolidated fee, for rendering her valuable professional service for disposal of the present appeal.

30. 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)

Niraj/-

AFR/NAFR	
CAV DATE	18.06.2026
Uploading Date	01.07.2026
Transmission Date	01.07.2026

