

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.358 of 2013**

Arising Out of PS. Case No.-274 Year-2007 Thana- BARAUNI District- Begusarai

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Pappu Mahton S/O Nandlal Mahton Resident of Village Keshaway, P.S.  
Barauni, District Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

**Appearance :**

For the Appellant/s : Ms.Akanksha Malviya, *Amicus Curiae*

For the Respondent/s : Mr.Satya Narayan Prasad, APP

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

**CAV JUDGMENT**

**Date : 01-07-2026**

Heard Ms. Akanksha Malviya, learned *Amicus Curiae* and Mr. Satya Narayan Prasad, learned APP for the State.

2. The above criminal appeal has been preferred against the judgment of conviction dated 24.04.2013 and order of sentence dated 26.04.2013 passed in Sessions Trial No. 62/2009, arising out of Barauni P.S. Case No. 274 of 2007, G.R. No. 2310/2007 and Trial No.2427 of 2009 by learned 3<sup>rd</sup> Additional Sessions Judge, Begusarai, whereby the learned trial court convicted the appellant under Sections 376/511 of the Indian Penal Code and sentenced him to undergo five years R.I.



and to pay a fine of Rs. 1,000/- and in default of payment of fine, to further undergo R.I. for one month.

**BRIEF FACTS OF THE CASE**

3. The prosecution story in short is that while the victim went to attend call of nature in the maize field outside the village, the appellant followed, caught hold and pushed her on the ground and tried to commit rape but upon the alarm raised by the victim, the appellant fled away from the place of occurrence. It is further alleged that the appellant had earlier also tried to outrage her modesty on several occasions.

4. On the basis of written complaint of the victim, Barauni (Refinery) P.S. Case No.274 of 2007 was registered on 14.08.2007 under Section 376/511 of the IPC, thereafter the charge-sheet no.196 of 2008 was submitted on 11.06.2008 and the learned CJM, Begusarai took cognizance under Sections 376/511 of the IPC and the case was transferred to the court of the learned J.M. Ist class, Begusarai. Investigating officer submitted chargesheet, thereafter, the case was committed to the court of Sessions on 19.01.2009 and after holding trial, appellant has been convicted.



**ARGUMENT OF AMICUS CURIAE**

5. Ms. Akanksha Malviya, learned *Amicus curiae*, appearing on behalf of the appellant submitted that the impugned judgment of conviction dated 24.04.2013 and order of sentence dated 26.04.2013 passed by the learned 3<sup>rd</sup> Additional Sessions Judge, Begusarai in Sessions Trial No. 62/2009 arising out of Barauni P.S.Case No.274 of 2007, GR.No.2310 of 2007 and Trial No.2427 of 2009 is illegal and unsustainable in the eye of law, as the same has been passed without proper appreciation of the evidence on record. She further submitted that the appellant has been falsely implicated in the present case due to the dispute with respect to the boundary wall since both the parties were agnates and living in the same '*Angan*'. The learned counsel further submitted that in view of the material contradictions, lack of corroboration and failure of the prosecution to prove its case beyond reasonable doubt, the appellant is entitled to benefit of doubt and the impugned judgment is liable to be set aside.

**ARGUMENT ON BEHALF OF THE STATE**

6. *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 appellant for said offences as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

**ANALYSIS AND CONCLUSION**

7. Heard the parties.

8. 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.

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

P.W.-1 Lootan Mahton

P.W.-2 Ram Kumar Mahton

P.W.-3 Ranjeet Mahton

P.W.-4 Ranjeet Kumar

P.W.-5 Kari Mahton (husband of victim)

P.W.-6 Anita Devi (victim)

P.W.-7 Prohit Mahton

P.W.-8 Balu Nand Ram (Investigating Officer)

P.W.-9 Rajesh Ranjan (the then SHO of Barauni Refinery O.P.)

10. The prosecution has also relied upon following



documents exhibited during the course of trial:-

- (i) Ext.1 – Forwarding note of S.H.O. Refinery O.P. to S.H.O. Barauni P.S. on written report
- (ii) Ext.I/I – Endorsement of S.H.O. Barauni on written report
- (iii) Ext.2 – Formal FIR of this Case.

11. It would be apposite to discuss the oral/documentary evidences. The evidence of the prosecution witnesses (PWs) can be summarized as follows:

(i) P.W.1 – Lootan Mahton: This witness has deposed that while he had gone to see his field, he heard crying a woman, went there and saw that the accused (appellant) is lying on the victim and trying to commit rape. He ran towards the accused and the accused fled away from the place of occurrence.

(ii) P.W.2 – Ram Kumar Mahton: This witness has deposed same as has been stated by P.W. No.1

(iii) P.W.3 – Ranjeet Mahton: This witness has deposed same as has been stated by P.W.1 and 2.

(iv) P.W.4 – Ranjeet Kumar: This witness proved forwarding note and endorsement. In cross examination stated that the written report/endorsement was not written in his



presence and he had no knowledge about the contents.

(v) P.W.5 – Kari Mahton: This witness is the husband of victim, who has stated that while he had went to see his land, he heard sound of his wife (victim), he went in the field of Ram Subhag Singh and saw that accused is ridden on the chest of his wife and tried to to rape her, he threatened the accused then he fled away.

(vi) P.W.6 – Anita Devi (victim): She has corroborated her statement as alleged in the FIR (written report).

(vii) P.W.7 – Rohit Mahton: This witness has deposed that he had seen the accused lying on the victim in the field and seeing him, the accused fled away.

(viii) P.W.8 – Babu Nand Ram: He is the then SHO of Refinery O.P. and I.O. of the case, who has established the place of occurrence.

(ix) P.W.9 – Rajesh Ranjan (I.O. of the case): He took charge of investigation at a later stage and submitted charge-sheet. He also proved formal FIR.

12. The record reveals that P.W.-1, P.W. 2 and P.W. 3 have turned hostile and all of them categorically stated that they do not know about occurrence. P.W.No.5 and P.W. No.7 have failed to establish the time of occurrence.



13. Before I proceed to analyze the allegations based on the facts and evidences, which has come in course of trial, I find it appropriate to reproduce the provisions of Sections 375 and 376 of the Indian Penal Code and governing law settled by the Apex Court for the sake of convenience and better understanding of the facts, 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]"*

14. On careful perusal of the materials available on record, it appears that the prosecution case mainly rests upon the testimony of the prosecutrix. It is well settled principle of law that conviction can be based upon the sole testimony of the prosecutrix provided that such testimony is trustworthy, reliable and inspires confidence.

15. The records disclose that the Medical Officer was



not examined during the course of trial. Undoubtedly, it is required to prove the medical evidence relating to the nature and cause of injuries. The examination also affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination. In this regard, it is well settled that the mere non-examination of the Medical Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused; and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in (2013) 3 SCC 791 is reproduced hereinafter:

*“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had*



*examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."*

16. A careful examination of the prosecution case reveals a material improvement in the version of the victim during trial. In the written report, which formed the basis of the FIR, the allegation against the appellant was essentially that he had followed the victim, caught hold of her, lifted her and threw her on the ground. However, when examined before the learned trial Court as P.W.6, the victim went a step further and deposed that the appellant had shut her mouth, opened her *saree*, mounted upon her and attempted to commit rape, fleeing only after she raised alarm and her husband arrived at the place of occurrence. Thus, the allegation of an attempt to commit rape assumes greater prominence in her deposition before the Court than in the version initially disclosed in the FIR. This constitutes a significant improvement over the earliest version of the prosecution case and same requires cautious scrutiny while appreciating the reliability and evidentiary value of testimony of



victim PW-6 can be said to be reliable and trustworthy?

17. The Apex Court in case of **Krishan Kumar Malik v. State of Haryana**, reported in (2011) 7 SCC 130, held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

*"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellants guilty of the said offences.*

*32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellants."*

18. The Apex Court further 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.

19. In the case of ***Rai Sandeep v. State (NCT of Delhi)***, reported in, ***(2012) 8 SCC 21***, the Apex Court found totally conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, resulting in material inconsistencies. The Apex Court reversing the conviction and held that the prosecutrix cannot be held to be a 'sterling witness', the Apex Court has opined as under:

*“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a ‘sterling witness’*



*whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”*

*(emphasis supplied)*

20. 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.

21. Upon a careful re-appraisal of the evidence available on record, I find that no medical officer or doctor was examined during the course of trial to support the allegation of rape against the appellant. Consequently, there is no ocular evidence either on record, which could either corroborate or



substantiate the version of the prosecutrix regarding the alleged attempt to commit rape. It is true that the absence of medical evidence is not by itself fatal to the prosecution case and that a conviction for an offence under Section 376 IPC, or an attempt, thereof, can be founded solely on the testimony of the prosecutrix, provided her evidence is found to be wholly reliable, cogent, trustworthy and inspires confidence. However, in the present case, a careful scrutiny of the record reveals that while in the written report the allegation against the appellant was confined to following the victim, catching hold of her and pushing her on the ground but during her deposition before the learned trial court she made substantial improvements by alleging that the appellant had shut her mouth, opened her *saree*, mounted upon her body and attempted to commit rape. These material improvements assume significance, particularly when there is no medical or other independent evidence available to support her testimony. It is also an admitted position emerging from the record that there existed a land dispute between the parties. Though enmity by itself is a double-edged weapon and cannot be a ground to discard the prosecution case outright.

22. It nevertheless, furnishes a possible motive for false implication and, therefore, necessitates a more cautious



evaluation of the evidence. In such circumstances, where the prosecution case rests solely on the testimony of the prosecutrix, unsupported by medical evidence and accompanied by material improvements over the earliest version, the evidence is required to be scrutinized with greater care and circumspection. These circumstances create a reasonable doubt regarding the prosecution version, the benefit whereof must necessarily enure to the appellant.

23. 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 Apex Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

24. Applying the aforesaid legal principles of law in facts of the present case the conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, results in material inconsistencies and cannot be relied upon. I am of the view that the prosecution has



failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt and the conviction of the appellant cannot be sustained.

25. In view of aforesaid discussions of factual and legal aspects, it appears that the learned trial court has miserably failed to establish the charges levelled against the appellant/accused during the trial.

26. The impugned judgment of conviction dated 24.04.2013 and order of sentence dated 26.04.2013, is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, as such, he is discharged from the liability of his bail bonds. The fine deposited by the appellant, if any, shall be refunded to him.

27. Accordingly, the present appeal is allowed.

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

29. 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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