

Criminal Appeal (S.J.) No. 350 of 1993

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Against the judgment of conviction dated 04.09.1993  
Passed by the 2<sup>nd</sup> Additional Sessions Judge, Munger,  
in Sessions Trial No. 394 of 1990.

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Latan Yadav son of Late Kewal Yadav, Resident of village- Manpur, Police  
Station- Itaun(Lakhisarai), District- Munger. ....Appellant

Versus

The State of Bihar ....Respondent

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For the appellant : Mr. S. N. Prasad, Amicus Curiae

For the State : Mr. R. N. Jha, A.P.P.

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**P R E S E N T**

The Hon'ble Justice (Mrs.) Sheema Ali Khan

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**S. A. Khan, J.** The sole appellant has challenged the judgment dated 4.9.1993 passed by the 2<sup>nd</sup> Additional Sessions Judge, Munger, in Sessions Trial No. 394 of 1990, by which he has been charged under section 376 read with section 511 of the Indian Penal Code but finally, held guilty under section 354 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

2. The prosecution case is that the appellant took a eight years old girl i.e. the informant from the tea stall of her maternal uncle to Aahar on the pretext of picking vegetable leaves and tried to commit rape.

3. The defence case on the other hand is that the appellant earned his livelihood by taking settlement of cutting the grass from the land belonging to the railway from the railway contractor. In other words, the appellant is a sub-contractor. The appellant was always competing in the bid held by the railways with the maternal grand father of the victim for the settlement of grass and out of animosity he has been made accused in this case.

4. The appellant has remained in custody for three months and six days.

5. The occurrence is said to have taken place on 14.11.1989 at 10.00 A.M. when the entire village was awake and present at the market place where the tea stall was situated. From the trend of the cross-examination of the witnesses, it appears that the entire case is based on the statement of P.W.2 (victim girl). The victim girl does not remember the circumstances under which she went with the appellants to Aahar for plucking vegetables leaves. She does not remember the detail of the occurrence since obviously, she was a very young girl but it seems that she had been tutored to large extent. The other witnesses are all hearsay witnesses, who have made statement in court on the basis of the statement of the victim girl.

6. In any event, the occurrence had taken place on 14.11.1989 and at the time when judgment was delivered the age of the appellant was estimated to be 60 years and at present the appellant would be about more than 75 years of age.

7. Considering the lapse of time, I think that it would be in the interest of justice to alter the sentence of the appellant to the period already undergone in custody by him with a fine of Rs.1,000/- to be paid to the victim girl Baby Kumari, daughter of Chote Lal Chaurasia, within a period of two months from the date of receipt of the notice from the court below. In default of payment of fine, the appellant shall have to undergo rigorous imprisonment for two months.

7. In the result, this appeal is dismissed with modification in the sentence as aforesaid.

(Sheema Ali Khan, J.)

**Patna High Court.**  
**Patna.**  
**Dated the 4<sup>th</sup> May, 2009.**  
**NAFR/ JA/-**