

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.357 of 2025**

Arising Out of PS. Case No.-14 Year-2023 Thana- MAHILA P.S. District- Vaishali

Suman Kumari D/O Asrfi Rai @ Asharfi Ray R/O Vill.- Hasan Sarae,
Vaishali, P.S.- Baligaon, Dist.- Vaishali,

... .. Appellant/s

Versus

1. The State of Bihar
2. Nitish Kumar S/O Ram Kumar Ray R/O Vill.- Hasan Sarai, P.S.- Baligaon,
Dist.- Vaishali,

... .. Respondent/s

Appearance :

For the Appellant : Mr. Hemant Ray, Advocate
Mr. Sharad Kumar Verma, Advocate
For the State : Mr. Abhimanyu Sharma, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 30-04-2025

Heard Mr. Hemant Ray, learned counsel for the appellant/victim assisted by Mr. Sharad Kumar Verma and Mr. Abhimanyu Sharma, learned A.P.P. for the Respondent-State.

2. The appellant is the victim who has preferred the present appeal under provision of Section 413 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as 'B.N.S.S.') against part judgment of acquittal dated 09.01.2025 and order of acquittal dated 13.01.2025 passed by the learned District & Additional Sessions Judge-I, Vaishali at Hajipur in Sessions Trial No. 293 of 2024, arising out of Mahila P.S. Case



No. 14 of 2023 dated 20.05.2023, whereby the respondent-accused has been acquitted *qua* the offence punishable under Sections 376, 504 & 506 of I.P.C.

3. Learned counsel for the appellant/victim would mainly contend that the victim has filed the written complaint on 20th May, 2023 against the present respondent-accused in which the victim has specifically stated that in course of going to and coming from school/college, she met Nitish Kumar (respondent-accused) and they developed friendship. The appellant was the student of LKBD College and 8 months prior to lodging of this case, Nitish Kumar tried to pressurize her for establishing physical relationship with him and when she refused to do so, he started threatening her. Further, on 23.10.2022 at about 07:00 a.m. in the morning, Nitish Kumar called the appellant/victim to meet at Government High School situated near her house and when she went there, Nitish Kumar forcibly committed rape on her on the point of pistol and made her sign on a blank stamp paper and further threatened to kill her and all her family members if she revealed the matter to anyone. It is also stated that Nitish Kumar also took videos and photographs through his mobile phone at the time of committing rape and threatened her to make the same viral if she disclosed it to anyone. At the same time, the father of the victim finalized the marriage with Rahul Kumar. Then, Nitish



Kumar sent her photo and video by editing the same on the mobile of her brother and the mobile number of the prospective groom's side due to which her marriage was cancelled. It is further stated that Nitish Kumar also demanded ₹ 2 lakhs from the victim for deleting the photographs and video.

4. It is further contended that, after the registration of the F.I.R., the investigating agency carried out the investigation and, during the course of the investigation, the investigating officer collected the relevant material/evidence and also recorded the statement of the witnesses. Prior to that, statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred as the 'Code') was also recorded.

5. Thereafter, investigating officer filed the charge-sheet against the accused and, as the case was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court. Before the Trial Court, the case was registered as Sessions Trial No. 293 of 2024. During the course of the trial, the prosecution examined 6 witnesses and also produced the documentary evidence. Thereafter, the statement of the accused under Section 313 of the Code came to be recorded. However, the Trial Court acquitted the respondent No. 2 herein *qua* offence punishable under Sections 376, 504 & 506 of I.P.C. However, the said respondent has been convicted for



committing the offence punishable under Sections 67 & 67A of the IT Act. It is further submitted that as the respondent-accused has undergone the sentence of 1 year, 2 months and 18 days during the investigation and trial, no further sentence was awarded to him. Learned counsel, therefore, urged that the victim has preferred the present appeal against the order of acquittal passed by the Trial Court so far as the aforesaid offences under I.P.C. are concerned.

6. Learned counsel for the appellant/victim has supplied the copy of the F.I.R. as well as the deposition of the prosecution witnesses and the other evidence. Learned counsel referred the same. Thereafter, he would mainly contend that though there is a delay in lodging the F.I.R., the explanation has been given by the informant for not filing the complaint against the respondent-accused immediately. It is further submitted that the statement of the victim under Section 164 of the Code was also recorded and, before the Court, the victim (PW-5) has supported the case of the prosecution, despite which the Trial Court has discarded her deposition. It is further submitted that even the investigating officer has also specifically deposed before the Court that pen-drive (Exhibit-1) was supplied to him by the brother of the victim. It is further submitted that even there are certain *lacunae* on the part of the investigating officer while conducting the investigation. However, the benefit of



the same cannot be given to the accused. Learned counsel submits that the victim can be termed as a sterling witness and, therefore, simply relying upon her deposition, the conviction can be recorded. However, in the present case, the Trial Court has committed grave error while discarding the deposition given by the sterling witness and thereby acquitting the respondent-accused. Learned counsel, therefore, urged that the impugned order be quashed and set aside.

7. On the other hand, learned A.P.P. for the State submits that, looking to the facts and circumstances of the present case, this Court may pass an appropriate order. It is also submitted that, till today, the State has not challenged the impugned judgment and order rendered by the Trial Court by filing Government Appeal.

8. We have considered the submissions canvassed by the learned counsels and also perused the F.I.R. and the deposition of the prosecution witnesses and the other material provided by the learned counsel for the appellant/victim. From the evidence led by the prosecution before the Trial Court, it would reveal that the victim is aged about 22 years. She has specifically stated that the first incident took place 8 months prior to the date of lodging of the F.I.R. by her. Specific date has been mentioned by her in the written complaint with regard to the incident of rape. It has been alleged that, on 23.10.2022 at about 07:00 a.m. in the Government High School,



which is situated near her house, the respondent-accused committed rape on her and thereafter threatened her, as a result of which she did not inform her family members and the Police. Thereafter, marriage of the victim was fixed on 31st May, 2023. Prior to that, it is alleged that the respondent-accused sent the photographs and videos of the victim on the mobile phone of the brother and relatives of the victim. It is also alleged that the respondent-accused was demanding ₹ 2 lakhs for deleting the videos and photographs of the victim from his mobile phone.

9. Thus, from the aforesaid written complaint given by the victim, who is aged about 22 years, it appears that there was a delay in lodging the complaint. It would further reveal from the evidence led by the prosecution that the prosecution had examined 6 witnesses. PW-1 is the mother of the victim, PW-2 is the uncle of the victim, PW-3 is the Doctor who had given the opinion with regard to the age of the victim, PW-4 is the brother of the victim. The prosecution has examined victim as PW-5 and PW-6 is the investigating officer.

10. PW-1 Pramila Devi is the mother of the victim. She has deposed, in her examination-in-chief, that her daughter was studying in college. She became friend with Nitish Kumar, a boy from their neighbourhood. She was unaware about all this. When her daughter's



marriage was fixed, the boy started sending obscene photographs. He called her to the school next door and forcibly established physical relation with her and said that if she tells anyone, he would kill her and her entire family. She came to know about this when he sent the photographs. She has stated that the Seizure List of the pen-drive was prepared. She has further stated that accused did wrong acts with her daughter and made the video and also made her daughter sign a paper. Upon asking the girl, she came to know that the local residents said that the matter should be resolved there and the marriage should be done but her guardian did not agree. Nitish Kumar's uncle and father demanded ₹ 2 lakhs.

10.1. In her cross-examination, she has stated that her house and the house of the accused are in the same village at a distance of 1 kilometre and the marriage cannot take place between her family and the family of the accused. She has further stated that her daughter told her about the photographs but she did not see it. She does not know on which date the incident occurred. She has further stated that the F.I.R. was lodged a year after the incident. She does not remember the day, date and month of the incident. A *panchayat* was held regarding the incident. Her daughter's marriage was fixed in Bahuara. She does not remember the name of in-law. She does not remember the name of the prospective groom. The



marriage broke. The girl was brought to Mahua Hospital and was also taken to the Government Hospital, Hajipur. Her daughter was admitted in the hospital for 3 days.

11. PW-2 Vinod Ray is the uncle of the victim. He has stated in his deposition that, on 23.10.2022, Nitish Kumar did wrong with his niece. He made a video of that and threatened her. He made the video viral at the place where his niece's wedding was fixed. He also sent it to the victim's brother. After this, a *panchayat* was held in the village. A demand of ₹ 2 lakhs was made for deleting the video.

11.1. In his cross-examination, he has stated that the marriage cannot take place between the two parties. He had got his statement recorded before the Police. In his statement, he had stated that the accused Nitish Kumar committed wrong on the victim on 23.10.2022. He has further stated that his nephew showed him the video of the wrongdoing. The video was given to *darogaji*. He has further stated that his niece used to go to study with Nitish Kumar. He did not know whether there was a love affair between the two or not. Further, he has stated that his niece told him that ₹ 2 lakhs were demanded to delete the video.

12. PW-3 Dr. Ghazala Sehar Akhitar has deposed that, on 22.05.2023, she was posted as a Medical Officer at Sadar Hospital,



Hajipur. She had examined the appellant/victim and noted the following:-

“**M.I.** - Til on left cheek, Til on right cheek.

She refused physical examination and internal examination.

Dental examination- According to dental examination by Dr. Priyanka, Sadar Hospital P.t. ID5303 dated 22.05.2023 her dental age is between 19 to 20 years.

Radiological examination- According to radiological examination by Dr. L.P. Gupta pt. ID HJ-E-0734 dated 22.05.2023, her bone age is about 22 years.

Opinion – Based on above reports, in my opinion her clinical age is about 22 years (about twenty two years).”

12.1. In her cross examination, she has stated that the Police produced the victim before her and she has not physically examined the victim, as she had refused to get herself examined.

13. PW-4 Chandan Kumar Ray is the brother of the victim. He got the information about the incident in February, 2023. He called his sister to Delhi and enquired about the same upon which she told him that there was a school next to the house where she was called and raped and a video was made and a pistol was put on her ear and she was called at other places and raped. The accused Nitish Kumar used to chat, talk on video and ultimately he broke the marriage. Further, he has stated that the video was made viral and the marriage was broken.



13.1. In his cross-examination, he has stated that the accused Nitish Kumar is the resident of his village. He was in Delhi when he came to know about the incident. His sister had informed him about the incident. His sister underwent a medical checkup after the incident. He has further stated that the accused Nitish Kumar sent the video to him. The incident took place in Samastipur district but he does not remember the name of the village.

14. PW-5 is the informant/victim. She has stated in her deposition that on 23.10.2022 at 07:00 a.m., Nitish Kumar called her to meet in the Government school situated next to her house. There, he started forcing her to have physical relationship with him. When she protested, he put a gun on her temple and took her signature on a blank paper and then raped her. He also made a video of this incident. After that, he showed her the video and told her not to tell anyone otherwise, he would kill her. Later on, when her marriage was fixed, the accused Nitish Kumar edited the video and photographs and sent it to the prospective boy's side, abused them and forced them to break the marriage. Her marriage got broken. After this, Nitish Kumar and his family demanded ₹ 2 lakhs from her mother in exchange of deleting the video and photographs. When her mother refused him, he said that he would make the video and photos viral and, if possible, he would rape her again. During the



investigation, her medical examination was done by the Police and her statement under Section 164 of the Code was recorded. Her signature is on the statement which is marked as Exhibit-3. Further, she had stated that she had given a pen-drive to the Police, which is marked as Exhibit-1.

14.1. In her cross-examination, she had stated that her mother filed the case 6 months after the incident. Her statement regarding the incident was also given 6 months later. When she went to the Sadar Hospital, Hajipur for medical examination, she gave a written statement that she does not want to undergo physical checkup. She has further stated, in Para-10, that the Government school was closed at the time of the incident. There is a peon in the school. He was not there at the time of incident. The school is a two-storeyed school, she was on the second floor. The school room was not open that day but the room where the accused took her was open. The clothes which she was wearing at the time of incident was not given to the Police because the clothes were completely torn during the incident.

15. PW-6 Kumari Reena is the Investigating Officer of this case. She has deposed that, on 20.05.2023, she was posted as S.I. in Mahila Thana. After the responsibility of investigation was entrusted to her, she inspected the scene of the incident which is said to be the



first room after climbing the first floor of the building of Madhyamik Vidyalaya Hasan Sarai, Anchal-Patepur, Vaishali. Later, she had stated that the victim was taken to the Sadar Hospital for medical examination and the statement of the victim under Section 164 of the Code was recorded. The accused Nitish Kumar was found absconding. He surrendered in the Court. A seizure list of pen-drive was made which is marked as Exhibit-7. She also received C.D.R. She has further stated that she did not find anything noteworthy on the incident site. In Para-5, she has stated that the victim was taken to Sadar Hospital, Hajipur for medical examination. The victim refused to undergo physical examination which is mentioned in Para-15 of the case-diary. It is further mentioned that the victim refused to undergo physical examination even in front of the Doctor. During the investigation, the pen-drive was handed over to her by the victim's brother. The mobile phone which was used for chatting was found to be in the name of Md. Meraj. She did not seize the mobile phone on which the video was sent. The victim's clothe was not seized by her. The pen-drive was not sent for F.S.L. examination.

16. From the aforesaid deposition of the prosecution witnesses, it transpires that PW-3 (Doctor) has specifically deposed before the Court that, on 22.05.2023, she was posted at Sadar Hospital, Hajipur as a Medical Officer and she had examined the



victim. However, the said witness has specifically stated, in the examination-in-chief itself, that the victim refused physical examination and internal examination. Even victim and the Investigating Officer have also admitted the said aspect. Thus, from the aforesaid deposition of the prosecution witnesses, it can be said that for the reasons best known to the victim, who is aged about 22 years, she had refused for her physical examination as well as her internal examination. Thus, in the present case, there is no medical opinion from which it can be said that there was a sexual intercourse with the victim by the present respondent-accused and whether the rape was committed or not.

17. PW-6 (Investigating Officer), who has carried the investigation, has though deposed that, during the course of investigation, pen-drive and C.D.R. were seized and the Seizure List was prepared, however, during the course of cross-examination, the said witness has admitted that she did not send the pen-drive for necessary analysis to the F.S.L. Further, she has specifically admitted that the mobile phone from which chatting was done and videos were recorded was in the name of Md. Meraj. She has further stated that the mobile phone on which the videos were sent, was not seized by her. Further, in Para-5, the investigating officer has also admitted that the victim has refused for her physical and internal examination.



18. Thus, now we have considered the deposition given by PW-5 (victim/informant). The said witness i.e. the victim has also admitted, during cross-examination in Para-6, that she was sent for medical examination to Sadar Hospital, Hajipur. However, she did not give her consent for such examination. Further, with regard to the incident of rape which took place on 23.10.2022 at 07:00 a.m. in the morning in the Government High School, which is situated near her house, the victim has admitted, during cross-examination in Para-10, that the school was closed on the said day. Ordinarily, the peon remains in the school. However, on the said date, he was not present. The incident took place on the second floor of the school. The rape was committed in the room. However, whether the said room was opened or not, she does not remember.

18.1. At this stage, it is also pertinent to note that the investigating officer (PW-6) has also stated, in Para-3, that she visited the place of occurrence. However, the investigating officer has stated that the victim had shown the room of the first floor as the place of occurrence.

19. Further, for the alleged incident of rape which took place on 23.10.2022, FIR was filed on 20.05.2023, i.e., after seven months. Victim has failed to give reasonable explanation for the same.



20. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We are of the view that there are major contradictions, inconsistencies and discrepancies in the version of the prosecution. We are of the view that the victim cannot be termed as a sterling witness and, in the present case, as observed hereinabove, the victim has refused for her medical examination by the Government Doctor. Further, there is a gross delay in lodging the F.I.R. and in absence of any medical evidence or other corroborative evidence led by the prosecution in support of the version given by the victim, we are of the view that the prosecution has failed to prove the case against the respondent-accused beyond reasonable doubt, so far as the offences punishable under Sections 376, 504 & 506 of I.P.C. are concerned.

21. In the present appeal, the appellant/victim has challenged the order of acquittal rendered by the Trial Court. It is pertinent to note that we are dealing with the acquittal appeal and, at this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**. The Hon'ble Supreme Court has observed, in **Para-42**, as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:



(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”



22. In the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605**, the Hon'ble Supreme Court has observed, in **Para-22**, as under:-

“22. Recently, a three-Judge Bench of this Court in *Rajesh Prasad v. State of Bihar* [*Rajesh Prasad v. State of Bihar*, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

23. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption in favour of the accused when the order of acquittal has been accorded by the Trial Court. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent, unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the



Court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court.

24. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts and circumstances of the present case and the evidence led by the prosecution in the present case are carefully examined, the prosecution has failed to prove the case against the respondent-accused beyond reasonable doubt. We have also gone through the reasoning recorded by the Trial Court. We are of the view that the Trial Court has not committed any error while acquitting the respondent herein for commission of the offences punishable under Sections 376, 504 & 506 of I.P.C. We are, therefore, of the view that no interference is required in the present appeal which has been filed by the appellant/victim.

25. Accordingly, this appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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