IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.475 of 2013

Arising Out of PS.Case No. -12 Year- 2004 Thana -BATHNAHA District- SITAMARHI

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1. Bipin Mahto S/O Shivji Mahto Resident Of Village- Ranauli, P.S.- Bathanah, District- Sitamarhi
2. Satendra Hathi S/O Ram Priya @ Ram Prit Hathi Resident Of Village- Ranauli, P.S.- Bathanah, District- Sitamarhi
3. Barun Thakur S/O Late Bengai Thakur Resident Of Village- Ranauli, P.S.- Bathanah, District- Sitamarhi

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 573 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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1. Mohit Baitha S/O Late Tapsi Baitha Resident Of Village- Ranauli, P.S.- Bathanaha, District- Sitamarhi.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :
(In CR. APP (SJ) No. 475 of 2013)
For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Pushpendra Kumar Singh, Adv.
Smt. Divya Bharati, Adv.
Mr. Dinesh Jha, Adv.
Mr. Saroj Kumar, Adv.
For the Respondent/s : Mr. S.N. Prasad (APP)
(In CR. APP (SJ) No. 573 of 2013)
For the Appellant/s : Mr. Mr. Yogesh Chandra Verma, Sr. Adv.
For the Respondent/s : Mr. Abha Singh, (APP)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 26-07-2017

As both the above mentioned appeals arise out of the

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impugned judgment dated 06.06.2013 and order of sentence dated 07.06.2013, as such they are clubbed together and are being disposed of by this single consolidated judgment.

2. Both the above appeals are directed against the judgment dated 06.06.2013 and order of sentence dated 07.06.2013, passed in Sessions Trial No. 217 of 2006, by Shri Jagannath Rai, 1st Additional Sessions Judge, Sitamarhi, by which the appellants were convicted under Section 366 [part –II] and 120(B) of Indian Penal Code and were sentenced to under go R.I. for ten years with a fine of Rs. 10,000/- each and in default of payment of fine S.I. for six months. Apart from that appellant Mohit Baitha was also convicted under Section 376 of Indian Penal Code and was sentenced to under go further R.I. for ten years with a fine of Rs. 10,000/- and in default of payment of fine R.I. for one year. Further it was directed that the fine of Rs. 20,000/- imposed on appellant – Mohit Baitha is to be paid to the victim. All the above sentences were directed to run concurrently.

3. Further it appears from the record that appellant Bipin Mahto has taken the plea of being Juvenile and this Court vide order dated 08.01.2017 passed in Criminal Appeal No. 475 of 2013, directed him to appear before the Juvenile Board, Sitamarhi, for determination of his age and on direction of this Court, the age of appellant Bipin Mahto was determined and a report of Juvenile Justice Board,

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Sitamarhi is on the record showing the age of appellant Bipin Mahto 09 years 09 months and 23 days at the alleged date of occurrence.

4. It appears from perusal of the records that Prosecutrix – Sabita Kumari (P.W. 8) lodged a complaint petition being C-1-1453/2003 on 19.12.2003 with respect to occurrence of 30.11.2003 in the Court of learned Chief Judicial Magistrate, Sitamarhi against all the appellants as well as one Arun Baitha, which was later on sent to the police for institution of a case under Section 156(3) of Cr.P.C., on the basis of which Bathnaha P.S. Case No. 12 of 2004 was registered.

5. Prosecution case as per the complaint petition in short is that she was married in the village Harpur and she was illiterate and for last four months, she was living in her *maike* and the co-accused Arun Baitha, resident of the village of prosecutrix, always used to tease her but for prestige of her family, she used to keep mum and on 30.11.2003 in the evening, she went to attend a marriage ceremony in the house of one Ramdhyan Baitha and when she was returning to her house after attending the marriage ceremony, appellants Mohit Baitha and Arun Baitha forced her to drink *sarbat*, initially she refused but on insistence she took the drink, thereafter, she felt dizziness and became unconscious. Further case is that appellant Mohit Baitha and Arun Baitha got her boarded in the jeep, where other appellants, namely, Bipin Mahto, Satendra Hathi, Barun Thakur were sitting

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from before. Further allegation is that she was taken to Simra (Nepal) and was confined in a room and the appellant Mohit Baitha and Arun Baitha, on the point of dagger and pistol committed rape on her and took all her ornaments. It is also her case that as some of the villagers were suspecting their presence, next morning, she was shifted by the appellants to some unknown place, where in the night she managed to escape from the clutches of the appellants. Further case of the prosecutrix is that after coming over from the trauma, she informed about the incident to her father and mother and, thereafter, the complaint petition was lodged.

6. Police after investigation submitted charge-sheet against all the appellants and one co-accused Arun Baitha and after cognizance, case was committed to the Court of Sessions, which ultimately travelled to the file of Shri Jagannath Rai, 1st Additional Sessions Judge, Sitamarhi for trial and disposal.

7. It appears from perusal of the impugned judgment that later on trial of Arun Baitha was separated and the same was registered as Sessions Trial No. 538 of 2007.

8. During the trial, charges were framed against all the appellants under Section 366 [part –II], 376 and 120B of the Indian Penal Code.

9. On behalf of the prosecution, altogether nine witnesses have been examined and they are ; P.W. 1- Pappu Kumar (cousin brother of

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the prosecutrix), P.W. 2- Manish Kumar (brother of the prosecutrix) P.W. 3- Gita Devi (mother of the prosecutrix) P.W. 4 – Gandhi Singh (father of the prosecutrix), P.W. 5 – Ram Naresh Mahto (independent witness), P.W. 6 – Ramdhyan Baitha, P.W. 7- Doctor Sudha Jha (who examined the prosecutrix-victim girl) P.W. 8 – Sabita Kumari (prosecutrix/victim) P.W. 9- Rakesh Kumar (Investigating Officer).

10. Following documents have been admitted into evidence and marked as Ext. 1- Medical Report, Ext. -2 complaint petition, Ext. 3- Registration of F.I.R. and Ext. 3/3A – Signature on formal F.I.R.

11. No oral evidence has been adduced on behalf of the defence. However, certified copy of F.I.R of Bathanaha P.S. Case No. 111 of 2003, filed by the mother of co-accused Aruna Baitha has been brought on record as Ext. A, by defence.

12. Learned trial court after conclusion of trial convicted the appellants and sentenced them as stated above vide impugned judgment and order of sentence.

13. Being aggrieved by the said judgment and order of conviction, the appellants have preferred the present appeals.

14. In this case all the appellants have been convicted under Section 366 [part-II] and 120B of the Indian Penal Code and appellant Mohit Baitha has further been convicted under Section 376 of Indian Penal Code by the learned Trial Court, relying on the evidence of

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P.W. 8 (victim girl) that she was provided with 'sarbat' and after drinking the said 'sarbat' she felt dizziness and she became unconscious and she was taken on jeep by appellant Mohit Baitha and co-accused Arun Baitha and other appellants were in the jeep from before and they took her to Simra (Nepal) the above evidence has been corroborated by the evidence P.W. 1 and 2, who are brothers of the prosecutrix and P.W. 3 and 4, mother and father of the victim. Learned Trial Court has also relied upon the evidence of victim so far she being raped by the appellant Mohit Baitha and co-acused Arun Baitha.

15. Learned counsel for the appellants has assailed the judgment on the ground that prosecution case is full of absurdities and improbabilities as though the witnesses i.e. P.W. 1 and 2, who happens to be brother of the prosecutrix, claims themselves to be present in the *barat* in which the occurrence took place and in their presence occurrence took place, further the evidence also shows that P.W. 1 and 2 informed P.W. 3 and 4, who are mother and father of the prosecutrix, about the occurrence but in spite of the knowledge about the kidnapping of their daughter, they neither preferred to inform the police nor any step was taken by them to search the prosecutrix rather one set of evidence shows that she returned after 3-4 days after the occurrence and another set of evidence shows that she was brought

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back after four days and the present case was lodged after two and half months of occurrence. It has also been argued that it is the case of prosecution that victim girl was raped by the appellant – Mohit Baitha and one Arun Baitha at Simra (Nepal) but there is no independent witness of Simra to show her presence at Simra (Nepal) and the evidence of Doctor also does not support prosecution story of rape.

16. It has also been argued that the evidence of Investigating Officer shows that in spite of notice to the prosecutrix to appear before the Magistrate for recording her statement under Section 164 Cr.P.C, she did not choose to appear. Further submission of learned counsel for the appellant is that it is alleged that the appellants Bipin Mahto, Satendra Hathi and Barun Thakur were sitting in the jeep from before and they all have taken the prosecutrix in jeep to Simra (Nepal) but as per F.I.R. itself prosecutrix was in unconscious position and in such a situation, it is difficult to believe her evidence regarding the identification of these appellants by the prosecutrix. Further there is no material available on record showing that these three appellants had any active role in kidnapping of the girl.

17. On the basis of above circumstance, it has been argued that the conviction of appellants under Section 366A or 376 of Indian Penal Code is not just and proper and is fit to be set aside.

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18. On the other hand, learned counsel for the state has submitted that the materials available on record clearly show that prosecutrix was provided with a glass of *sarbat* and after drinking the said *sarbat,* she felt dizziness and became unconscious, thereafter, she was taken to jeep. Evidence has also come that appellants Bipin Mahto, Satendra Hathi and Barun Thakur was there from before. It has been argued that the above evidence clearly shows that they had conspired for kidnapping of the victim girl and taken her to Simra (Nepal). It has also been argued that it is well settled that conviction under Section 376 Indian Penal Code can be based only on the sole testimony of prosecutrix even in absence of corroboration of medical evidence and in this case P.W. 8 (prosecutrix) has stated about commission of rape by appellant Mohit Baitha and co-accused Arun Baitha and the same is corroborated by the F.I.R, the earliest version of prosecution and there is nothing in her cross-examination to discredit her evidence in court, as such there is no infirmity in the impugned judgment, hence the same does not require any interference.

19. In the above background, let me examine the materials available on record.

20. Evidence of P.W. 1, cousin brother of the prosecutrix, shows that he was present in the *Barat*, where the alleged occurrence took place and the prosecutrix – Sabita Kumari was also there. His

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evidence also discloses that the victim girl was taken away by the appellants. In his cross-examination in para -7, this witness has admitted that the prosecutrix became unconscious and thereafter, the appellants went there. This witness had admitted that he had not gone with the prosecutrix and further stated that nobody went to the hospital. Evidence of P.W. 2, who is brother of the prosecutrix, shows that he was also present in the *barat* he has stated that the appellants taken prosecutrix- Sabita Kumari on a jeep and further stated that they had taken her to the hospital for treatment. His evidence further shows that he came running and informed about the same to his father and mother. The evidence of P.W. 3, who is mother of the prosecutrix shows that her son came to her house and informed that the prosecutrix was taken by the accused persons. Evidence of P.W. 4, who is father of prosecutrix also shows that he was aware of the fact that the appellants have taken away his daughter and was aware that they have taken her to hospital but on close scrutiny of entire evidence it appears that there is no evidence available on record to show that they have made any effort to search the prosecutrix or made any complaint with the police. However, the evidence of P.W. 1 and P.W. 2 shows that prosecutrix became unconscious and was taken for treatment in hospital but in such a situation, normal conduct would have been to rush to the hospital but prosecution evidence is silent on

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this point and no step was taken to search her. It appears from perusal of evidence of P.W. 1 to 4 and 8 that prosecutrix returned back and informed about the commission of rape on her by the appellant Mohit Baitha and co-accused Arun Baitha.

21. In this case as stated above as per prosecution, occurrence took place on 30.11.2003 whereas complaint petition was filed on 19.12.2003 i.e. after twenty days and that too after lodging of the F.I.R by the mother of co-accused Arun Baitha on 17.12.2003 (Ext. A)

22. Prosecution has examined two independent witnesses i.e. P.W. 5 and P.W. 6, who are villagers. Evidence of P.W. 5 shows that he came to know that daughter of Gandhi Singh (P.W. 4) has fled away with Arun Baitha from the village and later on he came to know that they are at Simra (Nepal) and, thereafter, Ramashish Singh, Lalbabu Singh, Gandhi Singh, Ramshrestha Hathi and Kailash Bhagat, went to Simra and brought the prosecutrix as well as Arun Baitha to the village. This piece of evidence is contrary to the prosecution story, wherein it has been submitted that the prosecutrix returned back herself after 3 to 4 days. P.W. 6 is another independent witness and in his house, prosecutrix is said to have gone to attend the marriage ceremony and from there as per the prosecution, the prosecutrix was kidnapped and he has categorically stated that he does not know

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anything about the occurrence and *Darago Ji* has not recorded his statement. This piece of evidence of the prosecution witness is also not in conformity with the prosecution story and this witness is very important witness, considering the fact that alleged occurrence of kidnapping took place in his house. Further both the above witnesses have not been declared hostile.

23. Apart from that Medical report and the evidence of doctor i.e. P.W. 7 does not support the prosecution case as doctor has not found any sign of rape or any injury either external or internal on the person of the prosecutrix. On the other hand, she has found that the victim was carrying pregnancy of twenty four weeks, though the prosecutrix has been examined on 17.02.2004 i.e. after two and half months of the occurrence, it is obvious that no sign of rape was found but that does not make the prosecution case of rape unbelievable. Further as per the medical report of the doctor, the prosecutrix was pregnant prior to kidnapping.

24. It is well settled principle of law that on the basis of sole testimony of prosecutrix, conviction can be made under Section 376 of Indian Penal Code, if it is otherwise found reliable and free from any embellishment or doubt but in this case, there are so many circumstances that casts a doubt about the veracity of prosecution story as firstly the case itself was lodged after a lapse of twenty days

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and secondly the conduct of the family members of the prosecutrix is itself doubtful. Further there is evidence of I.O. shows that in spite of notices to the prosecutrix, she has not appeared before the Magistrate for recording her statement under Section 164 Cr.P.C. coupled with the fact that there is no corroboration of prosecution story of rape either by the medical evidence of by any independent witness. All these facts certainly casts a serious doubt on the entire prosecution story.

25. So far delay in lodging of F.I.R and conviction on sole testimony of prosecutrix is concerned, the same has been discussed by Hon'ble Apex Court in its recent decision in the case of **Md.Ali @ Guddu vs State Of U.P** reported in **2015(7) SCC 272** in paras 21 and 27 to 30, which reads as under:-

> **"21. It is apt to mention here that in rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstance is not of significance. The authorities of this Court have granted adequate protection/allowance in that aspect regard being had to the trauma suffered, the agony and anguish that creates the turbulence in the mind of the victim, to muster the courage to expose oneself in a conservative social milieu. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all the psychological inner strength to undertake such a legal battle. But, a pregnant one, applying all these allowances, in this context, it is apt to refer to the pronouncement**

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in Rajesh Patel v. State of Jharkhand[5] wherein in the facts and circumstances of the said delay of 11 days in lodging the FIR with the jurisdictional police was treated as fatal as the explanation offered was regarded as totally untenable. This Court did not accept the reasoning ascribed by the High Court in accepting the explanation as same was fundamentally erroneous.

27. Be it clearly stated here delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW-2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt.

28. That apart, the factum that the appellant informed the mother of the victim that he had left the prosecutirx at the door of her house also does not

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command acceptance. The recovery of the prosecutrix by the brother and her friends also creates a cloud of suspicion. We are not inclined to believe the prosecution version as has been projected that one Arif had informed the brother of the prosecutirx that his sister was at his place but for reasons best known to the prosecution, Arif has not been examined. That apart, the persons who were accompanying the brother have also not been examined by the prosecution. Thus, the manner of recovery of the prosecutrix from the house of Arif remains a mystery.

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has

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categorically deposed that there are no injuries on the private parts. The delay in FIR, the non- examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unreproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same."

26. Further Hon'ble Supreme Court in the case of **Raju v. State of M.P.** reported in **AIR 2009 SC 858** has also considered on the point of conviction under Section 376 of Indian Penal Code on the sole

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testimony of prosecutrix and held in para -9 as under:-

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh’s case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape

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> **more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined**.

27. Considering the principle settled by Hon'ble Supreme Court, it appears that delay in the present case has not been explained, secondly conduct of the prosecution witnesses are abnormal and thirdly evidences of P.W. 5 and P.W. 6 are not in conformity with the prosecution case and fourthly medical evidence does not support the

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prosecution case of rape. On the other hand, the defence story as per Ext. A is that an F.I.R was lodged by Phulmati Devi, mother of co-accused Arun Baitha being Bathnaha P.S. Case No. 111 of 2003 dated 17.12.2003, which shows mother of co-accused Arun Baitha has lodged a written report on 11.12.2003, stating therein *inter alia* that her son Arun Baitha was a student of matriculation and daughter of Ganesh Singh (P.W. 4) Sabita Kumari was not happy with her marriage and she got Arun Baitha agree to flee away with her, for which, a Panchayati was also held in which son of Bilat Singh, Kamlesh Singh and Rakesh Singh said that they will go by jeep on which she declined and she went on foot on 04.12.2003, whereas, Chandeshwar Singh, Kamlesh Singh and Rakesh Singh, Jitu Singh, Lalbabu Singh had gone to Simra (Nepal) and apprehended Arun Baitha and Sabita Kumari from the house of one Rasbihari Singh and brought them back to village. F.I.R (Ext. A) also shows that as there was night, she remained in Simra (Nepal) and when she came back to her village, she came to know that her son has been confined in a room of Badrilal Jha and the Sabita Kumari was confined in the house of one Yogendra Singh, there she had gone to enquire about her son along with his brother appellant – Mohit Baitha, where she was abused and was paraded in the village in naked condition.

28. Defence story (Ext. A) found support from the evidence of

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P.W. 5, Ram Naresh Singh as he has also stated that he had heard that daughter of Gandhi Singh (P.W. 4) has fled away with the co-accused Arun Baitha and came to know that they were at Simra (Nepal), thereafter, Ramashish Singh, Lalbabu Singh, Gandhi Singh, Ramshrestha Hathi and Kailash Bhagat, went to Simra and brought the prosecutrix as well as Arun Baitha to the village and Arun Baitha was kept in the house of one Badri Jha next day he came to know that the Arun Baitha has fled away. He has also admitted that Phulmati Devi, mother of Arun Baitha has lodged a written report dated 11.12.2003 for kidnapping of her son, whereas, present complaint petition has been filed on 19.12.2003 besides that prosecutrix has also been examined on this point and she has admitted that mother of Arun Baitha has lodged a case of kidnapping and murder against Chandeshwar Singh, Kamlesh Singh, Rakesh Singh, Satendra Singh, Jitender Singh. She has admitted in para -9 that Arun Baitha was a student of matriculation and a suggestion was also given to her that she has love affair with Arun Baitha for the she fled away and a further suggestion was given that Arun Baitha was brought back by her brothers and uncle and others in the village and he was assaulted and murdered and mother of Arun Baitha was paraded in naked condition in the village and, thereafter, she had lodged a case and, thereafter, the present case was lodged, no doubt she has denied all

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these suggestions. Her evidence shows that at the time of occurrence, she was carrying pregnancy of two and half months and she was aged about eighteen years . P.W. 4, who is father of prosecutrix has also admitted that prior to lodging of this case, mother of Arun Baitha has lodged a case against Chandeshwar Singh and others for kidnapping of her son and the said Chandeshwar Singh is his *patidar.* A suggestion has also been given to this witness but he has denied the suggestion. However, he has admitted that the Arun Baitha was a student of matriculation.

29. Considering the entire discussions made above and the decisions as referred above, it appears that there are several circumstances, as discussed above, if considered closely with defence story creates a doubt with regard to genesis and manner of occurrence and story of rape. The delay of twenty days in lodging the F.I.R and that too after the case lodged by the mother of co-accused Arun Baitha (Ext. A) coupled with the fact that the conduct of the family members of the prosecutrix after the occurrence and evidence of P.W. 5 and P.W. 6 makes whole prosecution case improbable and unbelievanble.

29. As such to my opinion, the prosecution has miserably failed to prove its case against the appellants under Section 366 [part –II], 376 and 120B of the Indian Penal Code.

30. Accordingly, these appeals are allowed, conviction and

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sentence of appellants, namely, Bipin Mahto, Satendra Hathi and Barun Thakur under Section 366 [part –II] and 120B of Indian Penal Code and conviction and sentence of appellant – Mohit Baitha under Section 366 [part –II], 376 and 120B Indian Penal Code , is hereby set aside.

31. As the appellants are in judicial custody, they are directed to be released forthwith.

(Vinod Kumar Sinha, J)

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AFR/NAFR	
Uploading Date	
Transmission Date	

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