

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.756 of 2008**

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Pappu Tanti @ Puplesh Kumar, Son of Chandra Tanti @ Chamak Lal Tanti.
Resident of Village- Pakki Sarai, Police Station- Kahalgaon (Ghogha),
District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhanendra Chaubey, Advocate
For the State : Mr. A. M. P. Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 16.07.2025

Heard Mr. Dhanendra Chaubey, learned counsel
for the appellant and Mr. A. M. P. Mehta, learned APP for the
State.

2. This appeal has been filed under Section
374(2) of the Code of Criminal Procedure Code, 1973
(hereinafter refereed as ‘Cr.PC’) against the judgment and order
of conviction dated 14.07.2008 and 18.07.2008 respectively
passed by the learned Sessions Judge, Bhagalpur in Sessions
Trial No. 742 of 1999, G.R. Case No. 243 of 1999 arising out of
Kahalgaon (Ghogha) P.S. Case No. 34 of 1999 whereby and
where under the appellant has been convicted for the offences
punishable under Section 366(A) and 376 of the Indian Penal
Code (hereinafter refereed as ‘IPC’) and sentencing him to



undergo rigorous imprisonment for seven years and a fine of Rs. 5,000/- and in default of payment of fine one year sentence the appellant would serve and rigorous imprisonment for ten years and a fine of Rs. 5,000/- and in default one year more imprisonment would serve by the appellant and both the sentences shall run currently.

3. The case of prosecution in brief is that on 06.02.1999 at about 8.00 AM. the informant's niece namely Poonam Kumari aged about 15 years went to school to take Admit Card for the Matriculation Examination. When she did not returned till 1.00 PM. her mother informed the informant. The informant along with his *Bhabhi* went to school to search her, but the school was closed. When they came in the market at the shop of Pappu Tanti, where his brother Anand Tanti was present at the shop who told Pappu has gone to Bhagalpur for purchasing cosmetic goods for the shop. It was apprehended that Pappu Tanti had kidnapped Poonam Kumari for the purpose of marriage.

4. Further on the basis of the fardbeyan of the informant, Kahalgaon (Ghogha) P.S. Case No. 34 of 1999 was lodged against accused/appellant for the offence punishable under Sections 366 (A) and 376 of the IPC. The Investigating



Officer recorded the statement of the injured after finding the occurrence to be true, he submitted charge-sheet against accused/appellant Pappu Tanti vide charge-sheet no. 160 of 1999 dated 30.06.1999 under Sections 366 (A) and 376 of the IPC. Thereafter the cognizance was taken by the learned Chief Judicial Magistrate, Bhagalpur and case was committed to the Court of Sessions on 30.11.1999.

5. On behalf of the prosecution, altogether 7 witness were examined to substantiate the charges leveled against the accused/appellant Pappu Tanti. Out of them, PW-1 Savitri Devi, PW-2 Rajendra Mandal, PW-3 Gayatri Devi (mother of victim), PW-4 Kamleshwari Pd. Das (informant), PW-5 Dr. Smt. Krishna Sinha, PW-6 Poonam Kumari (victim), PW-7 Ganesh Mandal. On behalf of the defence two defence witnesses were examined, they are DW-1 Kamleshwari Mandal, and DW-2 Ramu Mandal

6. PW-1 in her examination-in-chief stated that upon hearing commotion (hulla), she went to the house of Poonam's mother. Upon inquiry, Poonam's mother informed her that the girl (Poonam) had not returned home. She further stated that people in the locality were discussing that Pappu Tanti had allegedly eloped with Poonam. However, she categorically



stated that she does not recognize Pappu Tanti. In her cross-examination, she stated that the occurrence took place at around 2:00 to 2:30 PM and approximately 8 to 10 people were present at the house of Poonam's mother at that time. Further, she stated that she had gone to Poonam's house with her husband. She stated that she is unable to recall the exact month of the occurrence but stated that the day was a Sunday.

7. PW-2 in his examination-in-chief stated that the occurrence took place on 06.02.1999 at about 8:00 AM. He stated that Poonam Kumari had gone to school in the morning but did not return home. At around 2:00 PM, a commotion ("hulla") broke out in the village, and it was being said that Pappu Tanti had eloped with Poonam Kumari. He further stated that he went to the police station along with Poonam's mother, where Kamleshwari Das, who is the paternal uncle of Poonam Kumari, lodged the case. He stated that he does not recognize the accused, Pappu Tanti.

7.i. In his cross-examination, he stated that the hulla occurred at about 2:00 PM, though he could not name the persons who raised it. He stated that his house is situated two houses to the west of Poonam's house, and that there are other houses located to its rear, east, and west. He further stated that



they reached the police station at around 9:45 PM, where police recorded the statements of Poonam's mother, his wife (Savitri Devi), and himself. He further stated that he had not gone to the police station that day or that his statement was not recorded. He further stated that on the date of occurrence, he had seen Poonam going to school alone in the morning. However, he was not aware whether the school was open or closed that day.

8. PW-3 in her examination-in-chief stated that on 06.02.1999 her daughter Poonam Kumari had gone to school at about 8:00 AM to collect her admit card but did not return home until 2:00 PM. Thereafter, her brother-in-law went to the school to search for Poonam but did not find her there. Upon returning, Kamleshwari Das informed her that he had heard commotion ("hulla") at the village chowk that Pappu Tanti had eloped with Poonam Kumari. She along with Kamleshwari Das then went to the house of Pappu Tanti to look for Poonam, but no one was found at the premises. Subsequently, Kamleshwari Das lodged a case at the police station. She further stated that her statement was recorded by the police the same night at about 10:00 PM. She further stated that after about one month, her daughter Poonam was found at Jagdishpur in the company of the accused Pappu Tanti. Both of them were then taken to the



police station.

8.i. In her cross-examination, she stated that she is educated up to class VII and Poonam had informed her before going to school on the day of the occurrence and that Poonam used to go and return from school alone. On that day, she herself did not go out to search for Poonam. She also stated that her husband resides in Bettiah. She denied the suggestion that there was a hartal (strike) at the school that day and stated that admit cards were indeed being distributed. She further stated that she does not know who informed Kamleshwari Das about Pappu Tanti's alleged involvement in the elopement. She denied that Poonam was previously acquainted with Pappu Tanti. However, she stated that Poonam used to visit the shop of Pappu Tanti along with Kamleshwari Das. She had no knowledge regarding any exchange of love letters between Pappu Tanti and Poonam and denied the suggestion that she was concealing such facts deliberately. She further affirmed that she had signed the statement recorded by the police and stated that she had made the statement that she had gone to the house of Pappu Tanti in search of her daughter.

9. PW-4 in his examination-in-chief stated that on 06.02.1999 at about 8 am, his niece Poonam Kumari, aged



15 years had gone to school to collect her admit card and when she did not return by 2 pm, his sister-in-law, Gayatri, instructed him to search for her. He first went to Sant High School, which was closed, and then searched in the local vicinity. At Ghogha Bazar, he was informed that Pappu Tanti was seen going towards Bhagalpur with Poonam Kumari. He further stated that he visited Pappu Tanti's shop and found his brother Anand Tanti, who said that Pappu had gone to Bhagalpur to bring some cosmetic articles for her shop. Upon visiting Pappu's house, he did not find him there. At 9 pm on the same day, he lodged the FIR at the police station, which he signed after the Sub-Inspector recorded his statement (Exhibit 1).

9.i. He further stated that after about 20 to 25 days, Poonam Kumari was recovered by the police from the house of Pappu Tanti's sister in Jagdishpur. He further stated that when Poonam found school to be closed and on way to return she was forcibly taken by Pappu Tanti and others in a jeep, where she was administered some substance and her mouth was tied. Poonam further told him that Pappu Tanti had committed rape upon her and made her sign on a blank paper. She was taken to Jagdishpur, where she was again administered tablets and repeatedly raped.



9.ii. In his cross-examination, he stated that he runs a tailor shop from 7-8 am to 9 pm, located about 1.5 miles from his house, and that the police station is about 14 miles away. The search for Poonam involved several villagers and lasted from 2 pm to 9 pm on that day. He last saw Poonam before 8 am when she left for school. He admitted that he did not accompany the police to Jagdishpur when Poonam was recovered and did not recall the exact date of her recovery. He also stated that he was present when Poonam narrated her ordeal but had not disclosed this information prior to the present testimony.

10. PW-5 in her examination-in-chief stated that on 04.03.1999 she was posted at J.L.N.M.C.M, Bhagalpur as R.S.O and that day she examined Poonam Kumari, daughter of Sambhu Prasad Das of village- Amapur, P.S. Kahalgaon District Bhagalpur and found following:-

*“There was no evidence of external injury all over the body or examination of private part
No injury on vulva or paremiom was found, pubic hair was present. There was no matting staining and no foreign hair was found. There was old tear on hymen. Introitus admitted two fingers. Uterus was anteverted, small and mobile. Vaginal swab was taken and sent for pathological examination for determination of presence of spermatozoa. Urine was sent in sealed vial for determination of HCG (whether*



pregnant or not). Victim was sent to radiologist for determination of age by X-ray of pelvis and wrist.”

10.i. She further stated that she receives both reports and reports indicated that spermatozoa was not found and existence of pregnancy could not be determined in absence of pregnancy detention kit. After radio-logical test vide X-ray No. 385 the age of the victim was determined below 18 years. There was no positive finding of rape and it was difficult to ascertain whether rape was committed or not. Hymen was torn and tear was old in nature, suggestive of sexual intercourse in the past. The medical report is in her pen and bear her signature, marked Exhibit-2.

10.ii. In her cross-examination, she stated that injury registered is maintained in her office. Preliminary injury was recorded on bed-head ticket dated 04.03.1999. After receipt of the pathological and x-ray report she incorporated everything in injury register. She have not maintained the date of receipt of pathological and x-ray report she have mention the date of receipt of reports in the injury registered. X-ray plate is not available before her today.

11. PW-6 in her examination-in-chief stated that her parental home is situated in village Amapur, P.S. Kahalgaon,



District Bhagalpur. Her father's name is Sadhu Prasad. On 06.02.1999 at about 9:00 AM, she was returning to her house from Sant High School, Ghogha. When she reached near an orchard, she noticed a jeep stationed there. Two or three persons forcibly took her into the jeep and brought her to Bhagalpur Railway Station. She was administered a tablet that rendered her unconscious and was subsequently taken by train to Danapur. She was kept confined in a room for four days, during which she was raped under threats and intimidation. She specifically identified the accused, Pappu Tanti, as one of the persons involved, and recognized him in Court. She further stated that although she repeatedly pleaded with her captors to allow her to return home, they threatened her. After four days in Danapur, she was taken to Bhagalpur, once again under the effect of a sedative. Her signature was forcibly taken on blank papers, and she was taken to Bhagalpur Court, where her statement was recorded. Thereafter, the accused took her to Jagdishpur and kept her at the house of a relative for 4–5 days, where she was subjected to repeated rape under drugs. Following a commotion (hulla), the police rescued her and brought her before the Magistrate, where her statement was recorded. She was also medically examined and later returned to her parental home.



11.i. In her cross-examination, she initially stated the incident occurred on a Sunday but later corrected herself, saying it was a Saturday. She again stated that the day of occurrence was Sunday but it was not in her mind so, she went to school to collect her admit card but returned on finding the school to be closed but she did not noticed whether the watchman was present there or not and she also did not meet anyone on the way to her school. She denied having any prior relationship or interaction with the accused. She further stated that before the day of alleged occurrence she used to seen Pappu Tanti at her uncle's shop in the market. She stated that she had not communicated with the accused/appellant prior to the alleged occurrence. She also stated that there was never any love affairs and exchange of love letters either 8 complete or 3 incomplete letters between her and accused. The defence confronted her with several letters (Exhibits X to X/10) purportedly written by her, and a photograph (Exhibit X/11) allegedly showing her with the accused. She denied the handwriting and signatures on the letters and asserted that although the photograph contained her image, she had never posed for a photograph with the accused. She rejected the suggestion that the letters or the photograph were genuine or



indicative of a consensual relationship.

11.ii. She further stated that she was intoxicated so she cannot state when she reached Bhagalpur station after leaving Ghogha. She stated that when she regained consciousness at about 2:00 PM and she was on the train and Pappu Tanti was with her but she cannot mention which train it was. She reached Danapur at around 6-7 PM. In Danapur, she was kept in a dark room and subjected to repeated rape by the accused, who allegedly bit her private parts with his nails. She did not resist due to physical weakness. She stated there were 6-7 rooms in the Danapur house but no other occupants. After 4-5 days, she was taken to Bhagalpur by train and reached around 6-7 am. She then traveled by bus to Jagdishpur with the accused. The road to Jagdishpur was busy and commercial in nature. She was kept in a house near the road for 6-7 days, where 10-15 people were residing. The accused continued to sexually assault her during this period. She was taken to Court once during this stay. Eventually, after a hulla was raised, police arrived and recovered her. Her statement was recorded before the Magistrate and her medical examination was conducted on the same day.

12. PW-7 in his examination-in-chief stated that the fardbeyan in the present case is in the handwriting and bears



the signature of P. Kant, Sub-Inspector, Ghogha Police Station, and he identified the document, which was marked as Exhibit-3. He further stated that the formal F.I.R. was prepared based on the fardbeyan and is in the handwriting and under the signature of A.S.I. Satyanand Singh, which he also recognized and was marked as Exhibit-4. He further stated that he identified the statement of Poonam Kumari under Section 164 Cr.P.C., recorded by Judicial Magistrate, Bhagalpur, as being in the Magistrate's handwriting and under his signature, which was marked as Exhibit-5.

12.i. In his cross-examination, he stated that he had not worked directly with any of the aforementioned officers and that the documents identified by him were not written in his presence. He also stated that he did not know the contents of the documents. He did not recall the exact duration of service of those officers at Ghogha Police Station.

13. After closure of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the present case.

14. DW-1 in his examination-in-chief, stated that he is familiar with the persons mentioned in the affidavit,



specifically identifying Paplesh Kumar @ Pappu and Poonam Kumari. He further stated that he knew Poonam Kumari, he used to teach tuition to Poonam Kumari in the year 1998. He further stated that he was acquainted with the handwriting of Poonam Kumari and all the letters were written by Poonam Kumari and identified all those letters in Court, which were marked as Exhibit-2 to Exhibit-10. He further stated that he identified the signature of Poonam Kumari on Vakalatnama, which he marked as Exhibit-V. He also recognized the signature of Paplesh Kumar on the affidavit, marked as Exhibit-C. He also identified the signature of Poonam Kumari on a second affidavit, which he marked as Exhibit-11. He further stated that in the year 1968, Poonam Kumari was aged about 19 years. He also stated that Pappu is present in the court and he is able to recognize him.

14.i. In his cross-examination he stated that he was brought to testify in Court by accused Pappu Kumar and his statement was not recorded before police. He further stated that he had been teaching tuition to children from 1967 to 2004, primarily to students of classes 4 and 5, though he later clarified that he also taught up to class 8. He stated that he cannot recall the names of all the children he taught over the years. He further



stated that he is able to identify the children he taught by examining their handwriting. He clarified that the age of Poonam Kumari, as mentioned by him, was provided as an estimate.

15. DW- 2 in his examination-in-chief stated that the Vakalatnama filed in the name of Advocate Shailendra Bihari Sharan bears the signature of the said advocate. He has verified the handwriting and signature of Advocate Shailendra Bihari Sharan and marked as Exhibit-D. He further stated that an application dated 14.02.1999 was typed by Ashok Chandra Das, typist. The application bears the initials of Shri Shailendra Bihari Sharan, which the witness recognized and marked as Exhibit-E. He further stated that he cannot tell the age of Advocate Shailendra Bihari Sharan as mentioned in the Vakalatnama.

16. Learned counsel for the appellant submits that the impugned judgement of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgement of conviction and order of sentence and from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the prosecution's case is



false and fabricated.

16.i. He further submitted that Section 366-A of the IPC is not applicable in the present case because the victim (PW-6) was not minor at the time of occurrence. He submitted that to prove the allegation of Section 366-A of the IPC victim should be minor and forced or seduced to illicit intercourse. In the present case there is no proof of forcible intercourse or seduce to illicit intercourse which are appearing in the deposition of PW-6. He further submitted regarding the prove of age of the victim that no Medical Board was constituted for determining her age. Mere statement about age cannot be the ground of conviction under Section 366-A of the IPC.

16.ii. He further submitted that the appellant has filed Matric pass certificate dated 30.09.1999 issued by Bihar School Examination Board, Patna in I.A. No. 794 of 2009 in this appeal as Annexure-1 in which the date of birth of PW-6 mentioned 15.01.1980 as such the PW-6 was not under age on the date of occurrence. It is pointed out that this certificate was not available to this appellant during trial hence it may be considered in the interest of Justice. He further submitted that there is contradiction about the age of PW-6 (Victim) from the age given in the First Information Report (Ext. 4) and Report of



PW-5(Doctor) i.e. Ext. 2

16.iii. He further submitted that the prosecution has not proved the case beyond reasonable doubts under Section 366(A) of the IPC and the appellant was fit to be acquitted under the charge of Section 366(A) of the said code. Section 376 of the IPC is not applicable because no rape has been committed with the PW-6 (Victim) against her will or otherwise. On considering oral evidence of PW-6 (Victim) and PW- 5 (Doctor) are important which has not been considered by learned Trial Court while discussing this important point. Ext. 5 (Doctor's Report) was not considered to ascertain the rape with PW-6 because the PW-6 has narrated her activities and situation of consent with appellant from the village to Danapur and Danapur to Jagdishpur and, therefore, the Doctor found no positive sign of rape. Ext. A to A/10 are the love letters of PW-6 sent to this appellant which has not been considered while convicting him under Section 376 of the IPC.

16.iv. He further submitted that Hon'ble Jharkhand High Court has set aside the conviction and sentence order of accused under Section 366-A, 376 and 511 of Indian Penal Code on the ground that the victim had opportunity to raise alarm at various public places but she did not do so in the



case of *Mohd. Sazid Versus The State of Jharkhand* reported in *2024 SCC online (Jhar) Page 1341*. In the present case also PW-6 (Victim) did not raise alarm from Village to Danapur and from Danapur to Jagdishpur during train Journey and bus Journey. Learned counsel for the appellant lastly contended that in view of the aforesaid facts and circumstances, the prosecution has failed to prove beyond shadow of all reasonable doubts as other prosecution witnesses i.e. PW-1 to PW-4 and PW-7 have also not supported the prosecution case. Hence, the prosecution case against the appellant fails on this ground alone. So, the appellant should have been acquitted from the conviction as sentenced against him.

17. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

18. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before



the Trial Court. I have thoroughly perused the materials on record and as well as given thoughtful consideration to the submissions advanced by both the parties.

19. On deeply studied and scrutinized all evidences, it is evident to note that there are serious inconsistency in the deposition of prosecution witnesses as PW-2 in his deposition stated at first instant that he also went to police station and recorded his statement but later on he stated that he did not go to police station on the day of occurrence and his statement was not recorded by police. In deposition of PW-3 inconsistency appears as firstly she denied that Poonam was previously acquainted with Pappu Tanti. However, in subsequent line she stated that Poonam used to visit the shop of Pappu Tanti along with Kamleshwari Das. Moreover, she also stated in her deposition that on the day of occurrence she did not go out to search for Poonam in contrary to her own statement further she stated that she had gone to the house of Pappu Tanti in search of her daughter.

20. Further, PW-5 (Doctor) in her deposition stated that there was no positive finding of rape and it was difficult to ascertain whether rape was committed or not. PW-6 in her deposition initially stated the incident occurred on a



Sunday but later corrected herself, saying it was a Saturday. She again stated that the day of occurrence was Sunday but it was not in her mind so, she went to school to collect her admit card but returned on finding the school to be closed. PW-6 (victim) stated in her deposition that she was given drugs and not in her consciousness throughout journey from Bhagalpur to Danapur and Danapur to Jasdishpur but instead of being in state of unconsciousness she has given minute details of the journey and also had lunch while traveling. She stated in her deposition that there were other passengers also present in the train so, she has opportunity to raise the alarm and seeks help from the public but she did not which shows that she voluntarily accompanied appellant and went with her own consent. She also stated that there was never any love affairs and exchange of love letters between her and accused. But the letter was in her handwriting which is confirmed by DW-1 who is well acquainted with her handwriting as he was his tuition teacher and saw her while writing.

21. It is well settled principle of criminal justice system that the prosecution has to established its case beyond shadow of all reasonable doubts but the defense has to only create the suspicion. Moreover, after perusing the entire letters



ext. A series, it is evident that the letters of this form which is full of love and emotions can not be manipulated and are genuinely written by the victim herself. Further, it shows that the letters which were exhibited by the defence were written by the victim and the contents of the letters also corroborate with the fact that there was love and affection between victim and appellant. So, the acts done by both victim and appellant was consensual.

22. So, he can be considered as expert as far as opinion as to handwriting is concerned, according to Section 47 of Indian Evidence Act, 1872. The Section specifically allows the Court to consider the opinion of a person who is familiar with the handwriting of the individual who is believed to have written or signed the document in question. A person is considered acquainted with another's handwriting if they have:

(i). Seen the person write.

(ii). Received documents that appear to be written by that person in response to their own writings or under their authority.

(iii). Habitually received documents purporting to be written by that person in the ordinary course of business.

23. Section 47 of Indian Evidence Act reads as follow:-

47. "Opinion as to handwriting, when



relevant. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he had received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him”.

24. Moreover, as far as age of the victim is concerned it is evident from the transfer certificate which is exhibited in the record that her age is 19 years at the time of alleged occurrence. So, it is crystal clear that she is not minor at the time of alleged occurrence and letters in her handwriting shows that she was in love and affair with the appellant and accompanied him with her own consent. Further it is also evident that the essential element of Section 366A and 376 of the IPC has not fulfilled in the present case.

25. The Investigating Officer has not been examined during the course of trial and non-examination of



Investigating Officer is fatal to the case of the prosecution. The Supreme Court in **Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475** pointed out that-

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission. A police Jamedar in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”



26. The Hon'ble Apex Court in the case of **Munna Lal Vs. State of Uttar Pradesh**, reported in **2023 SCC OnLine SC 80** whose relevant paragraph Nos.- 28 and 39 of the said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law.’ These are:

(a).....

(b).....

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e).....

“39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort



worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable



doubt in the prosecution case.”

27. Further, Investigating Officer has also not been examined during the course of trial as it was fatal since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence.

28. Hence, the judgment and order of conviction dated 14.07.2008 and 18.07.2008 respectively passed by the learned Sessions Judge, Bhagalpur in Sessions Trial No. 742 of 1999, G.R. Case No. 243 of 1999 arising out of Kahalgaoon (Ghogha) P.S. Case No. 34 of 1999 is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from liability of his bail bond.

29. Accordingly, this appeal stands allowed.

30. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to



the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	01.07.2025
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Transmission Date	16.07.2025

