

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.155 of 2014**

Arising Out of PS. Case No.-179 Year-2004 Thana- HASANPUR District- Samastipur

Bhuneshwar Mochi @ Ram Nandan Mochi, Son of Late Ram Kishun Mochi,
Resident of Village-Sakarpura, P.S. -Hasanpur, District-Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Narain Sinha, Advocate
	:	Mrs. Mira Kumari, Advocate
For the Respondent/s	:	Mrs. Anita Kumari Singh , APP

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

Date: 08-04-2025

Heard Mr. Jitendra Narain Sinha and Mrs. Mira Kumari, learned counsel for the appellant and Mrs. Anita Kumari Singh, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C’) challenging the Judgment of conviction dated 14.02.2014 and order of sentence dated 22.02.2014 passed in Sessions Trial No. 438 of 2007 / 172 of 2010 in connection with Hassanpur P.S. Case No. 179 of 2004 passed by learned 1st, Additional District and Sessions Judge, Samastipur, whereby and where-under the appellant has been convicted for offence punishable under Sections 376/34 of the Indian Penal Code (hereinafter referred as “IPC”) and has been



sentenced to undergo rigorous imprisonment for 10 years with fine of Rs. 10,000/- and in default of payment of fine he shall further undergo simple imprisonment for one year.

3. The case of the prosecution in brief is that as per complaint petition of complainant she is poor labourer and from her labour work she used to maintain her family and she alleged that on 17.12.2003 at about 10 pm when she was sleeping in her house with her minor child where *dibiya* was lighting, the accused persons namely Madan Mochi and Bhuneshwar Mochi, entered into her house removing the gate and accused Madan Mochi began to remove the cloths from her body upon which she woke up and identified both accused persons in the light of *dibiya* and when she tried to raise alarm the accused Madan Mochi shown her knife and threatened to kill her if she will raise alarm and due to fear she became mum after which both the accused persons Madan Mochi and Bhuneshwar Mochi committed rape with her one by one and went away saying that if she shall raise alarm and say about the fact to anyone she shall be killed. The further case of the complainant is that while the culprits were going her daughter Rani Devi raised alarm upon which villagers assembled and identified the accused persons in torch light after which she was



going to police station but the villagers said to settle the matter through panchayat after coming of her husband but when her husband came to whom she narrated about the occurrence and the villagers were ready to settle the matter through panchayat but the accused persons refused from obeying the verdict of Panchayat after which she i.e., the complainant went to the police station but the police being in-collusion with the accused persons could not register her case after which she filed her complaint petition numbered as complaint case No. 1024 of 2003 in the court of Additional Chief Judicial Magistrate, Rosera who had forwarded the same under Section 156(3) of the Cr.P.C to the Officer-in-charge of Hassanpur police station to register the case and investigation after which this case was registered as Hassanpur P.S. Case No. 179 of 2004 by the Officer-in-charge of the police station and Sri Murlidhar Sharma, Sub-Inspector of police was deputed to investigate the case. During the investigation the Investigating Officer after due investigation had submitted the final form finding the allegation of the complainant false against the accused persons. The complainant had filed protest petition upon which the learned A.C.J.M, Rosera had directed for recording the statement of four witnesses under Section 164 of the Cr.P.C. of the private



petition of the informant without petition of IO and had deputed Sri V.K. Srivastava, J.M. Ist. Class, Rosera to record the statement of the witnesses Somain Devi, Rani Kumari, Pinki Kumari and Rinki Kumari. The statement of the witnesses recorded under Section 164 of the Cr.P.C. and also perusing the case diary the learned A.C.J.M, Rosera had took cognizance against both the accused persons for the offence under Section 376 IPC.

4. After commitment of the case record to the Court of learned Sessions the same has lastly been transferred to this court for trial and disposal. During the course of trial one of the accused persons Madan Mochi had died, hence through the order dated 27.05.2011 the proceeding of the case has been dropped against him.

5. On behalf of the prosecution, total 6 witnesses were examined to substantiate the charges leveled against the accused/appellant, out of them, PW-1 Ram Sakha Rai (hostile), PW-2 Rani Kumari, PW-3 Dinesh Rai, PW-4 Somain Devi, PW-5 Rinku Kumari and PW-6 Pinku Devi. Three defence witnesses DW-1 Jageshwar Mochi, DW-2 Ram Binod Rai and DW-3 Md. Sultan have also been examined on behalf of defence and they proved the documents filed on behalf of the accused, and have



also said that the accused is innocent has been implicated due to enmity and no occurrence had took place as alleged by the informant.

6. PW-3 Dinesh Rai has stated in his examination in chief that the occurrence is of about 5 years before and day was Wednesday at about 10.00 pm, while he was returning from his field and in the way when he reached near the house of Bilo Rai and saw that the noise is going on in his courtyard and also saw in the torch light that Madan Mochi was coming from his house and later came to know from the children that Madan Mochi has committed rape with the wife of Bilo Rai and again has said that two persons had committed the rape. He has identified the accused Madan Mochi present in the Court and has also claimed to identify other accused Bhuneswar Ram.

6.i. In his cross-examination he stated that Bhuneswar Ram is his villager, so he identified him but in that night he had not seen him. In para No. 8 of his cross-examination he stated that informant has got four sons and one daughter and one of his son and daughter have been married. In para 18 of his cross-examination he stated that he do not know Marni Devi w/o Bhuneshwar Mochi and he knows Siyaram & Bhuneshwar works in Railway and in para no. 20 of his cross-



examination he stated that Kausahlya Devi is younger sister in-law of Madan mochi. In para 25 of his cross-examination he stated that he can not say the name of the children of Bhuneswar & Madan Mochiandan. In para 29 & 30 of his cross-examination he stated that the wife of Bilo Mochi who is the complainant of the case had came in the morning to his house and has narrated him the entire fact.

7. PW-4 Somain Devi has stated in her examination-in-chief that she had filed the case against Bhuneshwar and Madan Mochi and the occurrence is of about five years nine months before at 10:00 pm, the day being Wednesday while she was sleeping at the Baranda of her house along with her two daughters Pinku and Rinku she has further stated in her examination in chief that Bhuneshwar caught her shoulder upon which she woke up and tried to free her but he could not free her and both Bhuneshwar and Madan said that they shall kill her if she shall make noise and both of them committed rape with her one by one and her daughters also remained mum due to fear. She further stated in her examination-in-chief that she had identified the accused persons in the light of *dibiya* and when she raised alarm several people came in which Dinesh and Bilapat Rai had also came and had



seen the occurrence. She further stated in her examination-in-chief that she was willing to go to police station but the matter came at Panchayat but later on the accused persons were not ready to obey the verdict of the Panchayat after which she went at police station but police could not register her case after which she came at Rosera Court and filed a case and had put her L.T.I. upon the paper of the case.

7.i. In her cross-examination she stated that she had came with her husband at about 10 pm and meet with Pramod Babu, Advocate and has further stated that Ram Kishun Mochi had three sons namely Jageshwar, Ram Pratap and Bhuneshwar but she do not know that Bhuneshwar is called as Ram Nandan or not. Regarding the accused Bhuneshwar she stated that he works in railway but she do not know as to where he is posted. In para 4 of her cross-examination she has denied from knowing the fact that Bhuneshwar who is the accused of the case had taken land in the name of his wife or not and has also denied from knowing the fact that for the said land itself her husband Siyaram had given advance money or not. In para 7 of her cross-examination she stated that she has got a son namely Dinesh Ram who is married one, having two children and his daughter Rani is also married one and she has also got



two other daughters namely Pinku and Rinku. In para 24 of her cross-examination she stated that at the time of occurrence her husband had gone to her parent's house at village Mahrauli and had come back on the next day and after three days of his coming she had filed case but she do not know as to what was written in the case. She has further said in her cross-examination that she had gone to the house of the advocate who had written her case. In para 25 of her cross-examination she stated that after 10 days of the occurrence police had come at her house, had recorded the statement of her daughters and has denied the defence suggestion that police had not recorded the statement of her daughters as she was at her sasural and had said herself that her daughters were Bachelor.

8. PW-5 Rinku Kumari has stated in her examination-in-chief that the occurrence is of about six and half years before of 10 pm and day was wednesday and she was sleeping with her mother and sister Pinku Kumari. She further stated in her examination-in-chief that Bhuneshwar and Madan Mochi had come near her mother and there was dagger in their hands and both of them committed bad work with her mother, firstly by Bhuneshwar Mochi and later on by Madan Mochi. She has identified both the accused persons present in court.



8.i. In her cross examination she stated that the accused persons are her grand father in relation and their house is after one house from her house and they do not know about the land dispute between them. She further stated in her cross examination that the night was dark and in the light of *dibia*, she had identified the accused persons. In para 2 of her cross examination she stated that when her mother raised alarm the accused persons began to punch dagger to her but they could not punch the dagger and in para 3 of her cross examination she stated that she and her mother had raised alarm but no one had came. In para 4 of her cross examination she stated that after doing illegal work accused persons had fled away while her father had gone to Delhi where he works. In Para 5 of her cross-examination she stated that her other sister are elder from her but at the time of occurrence of this case they were not married. In para 8 of her cross-examination this witness has also stated that her statement was recorded by the police.

9. PW-6 Pinku Devi is the other daughter of the informant and stated that the occurrence is of about 7 years before the day being Wednesday of 10 pm while she was sleeping with her mother in the bramda and Bhuneshwar Mochi as well as Madan Mochi came having knife in their hands and



had committed illegal work one by one with her mother. She further stated that first of all Bhuneshwar Mochi had committed the illegal work and after him Madan Mochi had done so and she had claimed to identify both the accused persons.

9.i. In her cross examination she stated the name of her father as Ram Bilash Mochi and has said that she do not remember as to when her father had come as she was child at the time of occurrence. In para 2 of her cross-examination she stated that her mother has not said anything to her rather she is speaking what she has seen. In para No.3 of her cross-examination she stated that her house is at chamar toli and she knows Dinesh Rai, Vishwanath Rai, Ram Balak Rai who are Babhan and their house is at bhabhan tola.

10. The accused has totally denied his involvement in the alleged occurrence of this case in his statement under Section 313 of the Cr.P.C. On behalf of the defence, 3 witnesses were examined DW-1 Jageshwar Mochi, DW-2 Ram Binod Rai and DW-3 Md. Sultan.

11. DW-1 Jageshwar Mochi has stated in his examination-in-chief that he is the brother of the accused Bhuneshwar @ Ram Nandan Mochi and cousin brother of Madan Mochi, the deceased accused of this case. He further



stated in his examination-in-chief that on 22.6.2002 Siyaram Rai had written a Sale-deed in favour of Marni Devi and the husband of the complainant was willing to purchase the land of the said sale deed which sale deed has been later on been marked as Ext. C. He further stated in his examination-in-chief that the sister in law of the accused Madan Mochi namely Sobha Devi has executed a sale deed on 21.4.2003 in the name of Sunita Devi w/o Kanhaiya Rai in which the husband is the complainant of this case has settled and so said Kanhaiya Rai has got this false case filed standing the complainant.

12. DW-2 Ram Binod Rai has also come to say that the complainant Sonmain Devi is Raiyat of Kanhaiya Rai and is settled in his land due to which she has falsely implicated the accused in this fabricated case on his saying due to land dispute. In his cross-examination, he could not say the khata number or plot number of the land in which the home of the complainant is and also could not say as to how many cases has been filed in his village.

13. Learned counsel for the appellant submits that appellant has falsely been implicated in this case and the impugned judgment of conviction and order of sentence are not sustainable in the eyes of law or on facts. Learned trial Court



has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. From perusal of the evidences adduced on behalf of the prosecution, it is crystal clear that the prosecution case has not been supported by anyone other than the informant/victim herself and it is relevant to note here that all other witnesses are interested witnesses. Learned counsel further submitted that there is delay of 5 days in filing the complaint for which the complainant had not given any explanation for delay. It is opined that there was no mark of any injury on private part of the victim. He further submitted that accused/appellant is agriculturist and important witnesses like Investigating Officer and Doctor for proving the offence have not been examined which shows serious irregularities and lacunae in the conduct of the investigation and the prosecution case is doubtful.

13.i. Learned counsel next submits that appellant /accused were not given opportunity to be contradicted the statement of the informant along with her 3 daughters under Section 164 of the Cr.P.C by marking the same in terms of Section 294 of the Cr.P.C. Learned counsel further submitted that the Investigating Officer of this case as well as the medical officer who prepared the medical report of the victim has not



been examined and only the interested witnesses who are either family members or neighbor of the victim has given their deposition and there are no any independent witnesses and, thus, the case is not proved beyond all reasonable doubts, and the conviction passed by the learned trial Court be set aside.

14. 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 beyond all reasonable doubts. 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.

15. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court and have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

16. Having deeply studied and scrutinized the facts and the materials available on record of the present case, it is evident to note here that there are material inconsistencies in the deposition of the witnesses. The prosecution case has not



been supported by anyone other than the informant/victim herself and it is relevant to note that all other witnesses are interested and related witnesses and no independent witnesses have been examined during the course of trial.

17. Further, the contents of the FIR and Medical Report have also not been proved as the evidence of the Investigating Officer as well as the doctor who have not been examined during the course of trial and non-examination of Investigating Officer and doctor concerned 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.”

18. 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.”

emphasis applied

19. Further prosecution has failed to prove the injury sustained by the victim as neither any medical report has been exhibited nor any medical practitioner has been examined during the course of the trial. 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 as PW-1 declared hostile and PW-2 in her deposition stated that Madan Mochi first came and raped her mother thereafter Bhuneshwar came whereas the victim in her deposition para 15 stated that first Bhuneshwar yadav came and raped her thereafter Madan Mochi came. Pw-2 further in her deposition stated that she saw her mother naked at the time of occurrence in para 20 whereas PW-4 in her deposition para 14 stated that accused/appellant did not completely removed her cloths and she was not naked. There are material inconsistencies in the depositions made by all



prosecution witnesses as all daughters of the victim were minor i.e., PW-2, 5 and 6 and magistrate can't order for recording of the 164 statement on request of the informant during the trial.

20. 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. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt, therefore, in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside

21. Hence, the Judgment of conviction dated 14.02.2014 and order of sentence dated 22.02.2014 in Sessions Trial No. 438 of 2007/172 of 2010 arising out of Hassanpur P.S. Case No. 179 of 2004 passed by learned 1st, Additional District and Sessions Judge, Samastipur 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.

22. Accordingly, this appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

