

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.602 of 2025**

Arising Out of PS. Case No.-176 Year-2021 Thana- DALSINGHSARAI District- Samastipur

Phulo Devi, aged about 54 years, Female, W/o Dinesh Sada R/o Village-  
Bhagwanpur, Chakshekhur, Ward no 1, PS- Dalsingh Sarai, Distt.- Samastipur  
... .. Appellant/s

Versus

1. The State of Bihar
2. Rajesh Rai S/o Late Ram Dev Rai R/o Vill - Mahisari, PS.- Ujiarpur, Distt.- Samastipur
3. Virendra Prakash S/o Late Shiv Narayan Mahto R/o vill - Bhagwanpur, Chakshekhu, P.S.- Dalsingh Sarai, Distt.- Samastipur  
... .. Respondent/s

**Appearance :**

|                      |   |                                                                   |
|----------------------|---|-------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Ashok Kumar Singh, Advocate<br>Mr.Surya Narayan Roy, Advocate |
| For the Respondent/s | : | Mr.Ajay Mishra, APP                                               |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 22-09-2025**

The present criminal appeal has been preferred under Section 413 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* against the judgment of acquittal dated 18.02.2025 passed by the learned Exclusive Spl. Judge (Rape and POCSO), Samastipur in T.R. No. 04/2025 arising out of Dalsinghsarai P.S. Case No. 176/2021 whereby Respondent Nos. 2 and 3 have been acquitted from the charge of Sections 366A, 376D and 504 of the Indian Penal Code, Section 6 of the Prevention of Children from Sexual Offences Act (POCSO Act) and Sections



3(1)(r), 3(i)(s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution case, in brief, is that on 01.05.2021, at about 7:00 PM, informant's minor daughter, aged about 15 years, went out for nature's call, but did not return back even after a long time. Thereafter, the informant and her family members started searching her, but could not trace her. Next day, informant came to know that Ashok Rai, Virendra Prakash, Ashish Kumar and Rajesh Rai kidnapped her daughter and on complain, they assured that they would bring back her daughter, but did not return back. When on 01.07.2021, the informant asked them again, then they called her by her cast name "Mushrani Harijan" of lower cast and abused her.

3. On the basis of written statement of the informant, Dalsinghsarai P.S. Case No. 176 of 2021 was instituted under Sections 366A, 376D & 504/34 IPC, Sections 4, 6 & 17 of the POCSO Act and Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the SC/ST (Prevention of Atrocities) Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 and 3 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed



against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether 09 witnesses i.e. PW1- Dr. Megha Ahuja, PW2- Chhoti Kumari, PW3- Sangita Kumari, PW4- Jawahar Lal Ram, PW5- Phulo Devi, PW6- Sunita Devi @ Anita Devi, PW7- Meena Devi, PW8- Dinesh Sada and PW9- Manoj Rai. The prosecution has also produced certain exhibits i.e. Ext. P1- signature of Dr. Megha Ahuja on medical report, Ext. P2- signature of the SHO on the FIR, Ext. P3- signature of the SHO on the formal FIR and Ext. P4- signature of the Incharge SHO on the last page of the chargesheet. The defence also examined six witnesses viz. DW1- Pandav Prakash, DW2- Krishna Mohan Prasad, DW3- Amit Kumar Soni, DW4- Vimal Rai, DW5- Mithilesh Kumar and DW6- Raushan Patel. The defence also produced certain exhibits i.e. Ext. DW/E.7- certified copy of complaint case filed by Birendra Prakash against Ajjet Kumar Jha & Ors.; Ext. DW/E.1/8- certified copy of the proceeding under section 144 Cr.P.C. in Mr. No. 396/2021; Ext. DW/E.1/1- Mahadalit receipt of mother of the victim in which the age of the victim mentioned 10 years in the year 2011; Ext. DW/E.1- prescription of Sadar Hospital, Begusarai; Ext. DW/F.1- receipt



of Sub Divisional Hospital, Dalsinghsarai; Ext. DW/F.1/1- Identify card of victim showing age 22 years, Ext. DW/F.1/2- photographs of victim and her husband with child; Ext. DW/E.1/10- order sheet of complaint filed by Basanti Rai against Ajeet Kumar Jha before Sub Divisional Public Complaint Redressal Forum; Ext. DW/E.1/11- Photocopy of deposition of Parmanand Prasad of S.T.NO. 488 of 2005; Ext. DW/E.1/12- certified copy of informant petition No. 404/23; certified copy of FIR in Dalsinghsarai P.S. Case No. 23 of 2023 filed by Sunil Kumar Kejriwal against Gopal Sah & Ors.; Ext. DW/E.1/16- certified copy of FIR and other documents compromise petition order-sheet in Dalsinghsarai P.S. Case No. 39 of 2023; Ext. DW/E.1/17- affidavit of Subham Kumar in which he has admitted that Sunil Kumar Kejriwal has got his signature on blank paper and used and manipulated in the FIR Dalsinghsarai P.S. Case No. 23 of 2023 Stamp Rs. 1000/-; Ext. DW/E-18- c.c. of information petition no. 793 of 2023 filed by Pandav Prakash @ Ram Babu Mahto against Ajeet Kumar Jha; Ext. DW/E.14- c.c. of FIR Dalsinghsarai P.S. Case No. 38/2023 filed by Gopal Sah against Ankur Kejriwal and others; Ext. DW/E 15- c.c. of FIR in Dalsinghsarai P.S. Case No. 200/2022; Ext. DW/A- xerox copy of the petition no. 625 of 2021; Ext.



DW/B- the rent details of Khata No. 175 of Mauza Bhagwanpur of Land Reforms Department; Ext. DW/B.1- The rent details of Khata No. 209 of Mauza Bhagwanpur of Land Reforms Department; Ext. DW/C- document of Land Reform Department, Bihar Govt. Zamabandi No. 1025 register of Khata No. 175; Ext. DW/C.1- document of Land Reform Department, Bihar Govt. Zamabandi No. 2115 register of Khata No. 175; Ext. DW/C.2- document of Land Reform Department, Bihar Govt. Zamabandi No. 1437 register of Khata No. 175; Ext. DW/C.3- document of Land Reform Department, Bihar Govt. Zamabandi No. 1206 register of Khata No. 175; Ext. DW/D- document of Land Reform Department, Bihar Govt. Zamabandi No. 471 register of different Khata and plot numbers; Ext. DW/E.1/2- c.c. of FIR Dalsinghsarai P.S.Case No. 341/2023; Ext. DW/E.1/3- xerox copy of C.R.Case No. 169/2020 in which Sunil Kumar Kejriwal has filed complaint case against Rajan Verma and Raj Kumar Singh in which the name of one witness is Ajeet Jha; Ext. DW/E.1/4- c.c. of Dalsinghsarai PS Case No. 71/2023 which has been filed by Hari Lal Yadav against Dheeraj Kumar, Sita Devi and others; Ext. DW/E.1/5- c.c. of the FIR in Dalsinghsarai PS Case No. 118/2023 and Ext. DW/E.6- c.c. of protest petition given by Hari Lal Yadav. Court Exhibit C1



affidavit of victim.

5. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused persons.

6. The learned trial court, on the basis of materials available on record and the evidence produced before the court, acquitted the accused persons observing that the prosecution has not been able to prove the guilt of the accused persons beyond a reasonable doubt. The contradictions in the evidence, the delay in filing the FIR and the evidence of witnesses create significant doubts.

7. It is submitted on behalf of the appellant that the learned trial court, while passing the impugned judgment, has committed gross error of law as well as of facts and the same has been passed in a mechanical manner. He further submitted that the prosecution witnesses have fully supported the case of the prosecution.

8. The learned counsel for the State submits that there is no perversity in the judgment of the learned trial court, and the prosecution had failed to prove the guilt of the accused persons before the learned trial court. Therefore, the order of the



learned trial court requires no interference in the present case.

9. We have heard the counsel for the appellant and the State, and have also gone through the records of the case.

10. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

11. On a careful scrutiny of the evidence adduced, this Court finds that the prosecution case is riddled with fundamental infirmities which strike at its root.

12. The foremost weakness is in the medical evidence. The doctor who examined the victim did not find any mark of injury or sign of sexual assault. There is no evidence of physical violence. Further, there has been no compliance of Section 53A Cr.P.C., inasmuch as the accused persons were not medically examined. In a case of this nature, though medical evidence is not always decisive, its absence assumes great importance when the main version itself is doubtful. The Supreme Court, in ***Tameezuddin alias Tammu v. State (NCT of Delhi)*** reported in ***(2009) 15 SCC 566***, has held that when the testimony of the prosecutrix is not wholly reliable, lack of medical corroboration makes the prosecution case unsafe, as observed from para 9 onwards of the judgment, which reads as under:

*“9. It is true that in a case of rape the evidence of*



*the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable.*

*10. We note from the evidence that PW 1 had narrated the sordid story to PW 2 on his return from the market and he had very gracefully told the appellant that everything was forgiven and forgotten but had nevertheless lured him to the police station. If such statement had indeed been made by PW 2 there would have been no occasion to even go to the police station. Assuming, however, that the appellant was naive and unaware that he was being led deceitfully to the police station, once having reached there he could not have failed to realise his predicament as the trappings of a police station are familiar and distinctive. Even otherwise, the evidence shows that the appellant had been running a kirana shop in this area, and would, thus, have been aware of the location of the police station. In this view of the matter, some supporting evidence was essential for the prosecution's case.*

*11. As already mentioned above the medical evidence does not support the commission of rape. Moreover, the two or three persons who were present in the factory premises when the rape had been committed were not examined in court as witnesses though their statements had been recorded during the course of the investigation. In this background, merely because the vaginal swabs and the salwar had semen stains thereon would, at best, be evidence of the commission of sexual intercourse but not of rape. Significantly also, the semen found was not co-related to the appellant as his blood samples had not been taken.”*

13. Secondly, the deposition of the prosecutrix, who is the most important witness, does not support the prosecution



case. In her testimony before the Court, she has stated that the accused persons had not committed any act against her. She has further admitted that it was under persuasion and fear from her mother that the present case was lodged against the appellants, and she clearly mentioned that other individuals, namely Sunil Jha and Sunil Kejriwal, were the ones who used to trouble her. She also admitted that the case was filed on 03.04.2022 under such pressure. When the prosecutrix herself exonerates the accused and attributes false implication, the substratum of the prosecution case falls apart. It is well settled that if the evidence of the prosecutrix is inconsistent and self-destructive, it would be unsafe to act upon it. In the case of ***Radhu v. State of M.P., (2007) 12 SCC 57***, it was observed in para of judgment, which reads as under:

*“16. The evidence of the prosecutrix when read as a whole, is full of discrepancies and does not inspire confidence. The gaps in the evidence, the several discrepancies in the evidence and other circumstances make it highly improbable that such an incident ever took place. The learned counsel for the respondent submitted that the defence had failed to prove that Mangilal, father of the prosecutrix was indebted to Radhu's father Nathu and consequently, defence of false implication of the accused should be rejected. Attention was invited to the denial by the mother and father of the prosecutrix of the suggestion made on behalf of the defence that Sumanbai's father Mangilal was indebted to Radhu's father Nathu and because Nathu was demanding money they had made the*



*false charge of rape to avoid repayment. The fact that the defence had failed to prove the indebtedness of Mangilal or any motive for false implication does not have much relevance as the prosecution miserably failed to prove the charges. We are satisfied that the evidence does not warrant a finding of guilt at all, and the trial court and the High Court erred in returning a finding of guilt.*

14. It is evident to take notice of decision rendered in the case of ***Rai Sandeep v. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, as observed from para 29 onwards of judgment, which reads as under:

*“29. As compared to the case on hand, we find that apart from the prosecutrix not supporting her own version, the other oral as well as forensic evidence also do not support the case of the prosecution. There were material contradictions leave alone lack of corroboration in the evidence of the prosecutrix. It cannot be said that since the prosecutrix was examined after two years there could be variation. Even while giving allowance for the time-gap in the recording of her deposition, she would not have come forward with a version totally conflicting with what she stated in her complaint, especially when she was the victim of the alleged brutal onslaught on her by two men that too against her wish. In such circumstances, it will be highly dangerous to rely on such version of the prosecutrix in order to support the case of the prosecution.*

...

*33. Applying the said principles to the facts of the case on hand, we find that the solitary version of the chief examination of PW 4, the*



*prosecutrix cannot be taken as gospel truth for its face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellants.”*

15. Thirdly, the prosecutrix has retracted from her earlier version and did not support the prosecution case in Court. The statement of the informant in this regard completely demolishes the credibility of the prosecution story. The law is settled that where the principal witness resiles and does not support the prosecution on material aspects, the entire case becomes doubtful.

16. Fourthly, the statement of the victim recorded under Section 164 Cr.P.C. does not contain the names of the accused persons. This contradiction between her statement during investigation and her deposition in Court makes her testimony unreliable. It is well settled that when there are material discrepancies between statements under Section 164 Cr.P.C. and deposition before the Court, it strikes at the root of the prosecution case.

17. To this, the lapses on the part of the Investigating Officer add further weakness. She has admitted that though the victim was recovered on 06.07.2021, she did not mention the name of the house owner from where recovery was made. She



further admitted that the victim was kept in the police station for about eight days before her statement was recorded under Section 164 Cr.P.C., and yet the name of the female constable in whose custody she remained was not disclosed. These omissions, coupled with her failure to collect authentic proof of age, are not minor irregularities but defects which go to the root of the matter.

18. From the overall appreciation of evidence, it is clear that the medical evidence does not support the charge, the prosecutrix has contradicted herself and retracted from her earlier allegations, her statement under Section 164 Cr.P.C. does not implicate the accused persons and the investigation suffers from glaring lapses.

19. In these circumstances, the prosecution has miserably failed to prove the charge beyond reasonable doubt, and the respondents are entitled to the benefit of doubt.

20. We find that the findings recorded by the learned trial court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.



21. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das v. State of Tripura*** reported in ***(2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

*"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.*

*14. There is no limitation on the part of the*



*appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."*

22. In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in (2008) 10 SCC 450 in paragraph 75, the Hon'ble Supreme Court has observed as under:

*"75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."*

23. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case, if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the trial court has the privilege of seeing the



demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

24. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial court.

25. Accordingly, the present appeal is dismissed.

26. Pending application(s), if any, shall stand disposed of.

**(Sudhir Singh, J)**

**(Rajesh Kumar Verma, J)**

Sujit/-

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