

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.369 of 2004

1. Ramjee Prasad Kamkar S/o Tarak Nath Kamkar
 2. Upendra Kumar Kamkar S/o Ramji Prasad Kamkar
 3. Sarswati Devi W/o Ramji Prasad Kamkar
All resident of Village Bihiyan, P.S. Bihiyan, District Bhojpur.
- appellants/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 401 of 2004

Jitendra Prasad Kamkar, S/o Ramjee Pd. Kamkar R/o vill- Bihiyan, P.S.-
Bihiyan, Distt. - Bhojpur

... .. appellants/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 369 of 2004)

For the appellants/s : Mr. Abhas Chandra, Amicus Curiae.

For the Respondent/s : Mr. S. A. Ahmed, APP.

(In CRIMINAL APPEAL (SJ) No. 401 of 2004)

For the appellants/s : Mr. Abhas Chandra, Amicus Curiae.

For the Respondent/s : Mr. S. A. Ahmed, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 19-12-2025

As learned counsel appearing for the appellants/accused has failed to appear when this matter was taken on Board for final hearing, therefore, this Court appointed Mr. Abhas Chandra, learned Advocate, present in Court, as an *Amicus Curiae* to assist the Court in disposal of the appeal.

2. At the very outset, learned *Amicus Curiae* informs that the appellant no. 1 namely, Ramjee Prasad Kamkar



alias Ramjee Singh and the appellant no.2 namely, Upendra kumar Kamkar alias Upendra Singh, of Cr. Appeal (SJ) No. 369 of 2004 had died during the pendency of the present appeal and the Appeal against them stood abated *vide* order dated 19.02.2025.

3. The appellants have preferred the memo of Appeals under sub-section 2 of Section 374 of Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) for setting aside the Judgment of Conviction dated 8.5.2004 (hereinafter referred to as impugned Judgment); and Order of Sentence dated 11.5.2004 (hereinafter referred to as impugned Order) passed by the then learned Additional Sessions Judge (Fast Track Court)- IVth Bhojpur, Ara (hereinafter referred to as the learned Trial Court) in Sessions Trial Number 497 of 1998 arising out of Bihia Police Station Case Number 159 of 1997, whereby the trial court has convicted the appellants Saraswati Devi and Jitendra Prasad Kamkar under Sections 366A and 120B of the Indian Penal Code, 1860 (in short IPC); and ordered to undergo Rigorous Imprisonment for a period of Seven (7) years for the offence under Sections 366-A and 120B and further appellants Jitendra Prasad Kamkar was sentenced to undergo R.I. for seven years under Section 376 IPC. All the



sentences were directed to run concurrently.

4. The prosecution case, in brief, as is apparent from the written application lodged by the informant (P.W. 4), namely Nirmal Kumar on 1.11.1997, is that on 19.9.1997 his sister Rita Kumari aged about 14 years, who was a student of Class IXth in Kasturba High School, Bihia, did not return from her school in the afternoon and her family members started looking for her. Rita Kumari (victim) was taught by a tutor named, Jitendra Prasad, who used to teach her at the house of the informant and in conspiracy with his brother Upendra Kumar Kamkar, Ramjee Prasad and his wife (father and mother of Jitendra Prasad), kidnapped her by inducement and got her concealed somewhere. Jitendra Prasad was also traceless in spite of vigorous searches and on being asked the appellants not only abused the informant rather also threatened to kill him. The informant further stated that there was delay in reporting the case due to engagement in search and looking for the victim and accused.

5. On the basis of the aforesaid written application of P.W. 4, namely Nirmal Kumar, Bihia (Ara) P.S. Case No. 159 of 1997 was registered for the offences punishable under Sections 366-A and 120B/34 of the Indian Penal Code, 1860. After



investigation, charge-sheet was submitted by the police against all the four accused persons, whereafter cognizance was taken by the learned C.J.M., Ara upon perusal of the materials collected during investigation on 17.2.1998 under Sections 366-A and 120B/34 of the Indian Penal Code, 1860, and thereafter, supplying the police papers in view of Section 207 of the Code of Criminal Procedure, 1973, committed the case to the Court of Sessions for trial on 2.11.1998 for disposal in terms of Section 209 of the Code of Criminal Procedure, 1973. On 26.2.1999, after hearing on the point of charge, the learned Third Additional Sessions Judge, Ara was pleased to frame charges under Section 376 of the I.P.C. against Jitendra Prasad Kamkar and under Sections 366-A and 120B of the I.P.C. against all the other three accused persons.

ARGUMENT ON BEHALF OF THE APPELLANTS

6. It is submitted by Mr. Abhas Chandra, learned *Amicus Curiae* appearing for the appellants/accused that the present conviction was recorded by the learned trial court on the basis of exhibits and material available on record. The prosecution examined seven witnesses: P.W.1, Dr. Abha Kumari, opined that the victim's age was around 17 years but clarified that the appearance of the third molar may occur between 17–25 years and stated that it was difficult to determine



whether rape had occurred and therefore neither the exact age nor sexual assault stood medically proved. P.W.2, Lal Baboo Sah turned hostile, P.W.3 Raj Kishore Prasad is a hearsay witnesses who later turned hostile. P.W.4, the informant Nirmal Kumar, admitted in cross-examination that the FIR was lodged merely on suspicion. P.W.5, the victim, in cross-examination stated that she was apprehended by police after reaching Delhi and never informed any doctor of torture or rape, rather she disclosed her age as 21 years before the doctor as well as before a Delhi Court, putting her signature on oath (Exhibit-A). She further deposed that her statement under Section 164 Cr.P.C. was given under threat and direction of the Sub-Inspector, and not voluntarily, and that she had sent several letters to the appellants Jitendra Prasad (Exhibit-B) wherein she declared herself to be above 18 years. She consistently stated that she had gone with the appellants of her own free will and that no force was used, and she has also denied that the appellants' family members ever went to Delhi, asserting that she had named them only under the pressure of the police officials. P.W.6 was another hearsay witness. P.W.7, the Investigating Officer, deposed that he acted on information from P.W.3 regarding the victim allegedly being concealed by the appellants, but P.W.3



subsequently turned hostile. Thus, the material prosecution witnesses either did not support the case and resiled from their earlier statements, which is also one of the reasons to view the judgment of conviction doubtful.

7. It is further argued that the statement of victim and other prosecution witnesses also appears to be recorded in a very cryptic and mechanical manner without explaining all incriminating circumstances as per established principle of law, and on this score alone, the judgment of conviction and order of sentence are liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

8. Mr. S.A. Ahmed, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences as the offences alleged against the appellants appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.



11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of Conviction dated 8.5.2004 for the offences under Sections 366A, 120B and 376 of the IPC.

12. During the trial, the prosecution has examined altogether seven witnesses, namely:

- (i) Dr. Abha Kumari Lalti Devi (P.W.-1),
- (ii) Lal Babu Shah (P.W.-2),
- (iii) Raj Kishore Prasad (P.W.-3),
- (iv) Nirmal Kumar (P.W.-4/ Informant- Brother of Victim),
- (v) Rita Kumari (P.W.-5/ Victim),
- (vi) Vishwanath Prasad (P.W.-6),
- vii) Narendra Mohan Jha (P.W.-7).

13. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Injury Report (Exhibit-1),
- (ii) Fardbeyan (Exhibit-2),
- (iii) Signature over Sec. 164 CrPC (Exhibit-3),
- (iv) Formal FIR (Exhibit-4).

14. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of



the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

16. It would be appropriate to reproduce the provisions of Sections 366A, 120B and 376 of the IPC for the sake of convenience and better understanding of the facts, which are as under:-

“366A. Procurement of minor girl.—

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

120B. Punishment of criminal conspiracy.—

(1)Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2)Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

376. Punishment for rape.—

(1)Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall



not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]

(Subs. by Act 22 of 2018, s. 4, for “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine” (w.e.f. 21-4-2018)

(2)Whoever,—

(a)being a police officer, commits rape—

(i)within the limits of the police station to which such police officer is appointed; or

(ii)in the premises of any station house; or

(iii)on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b)being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c)being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d)being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f)being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g)commits rape during communal or sectarian violence; or

(h)commits rape on a woman knowing her to be pregnant; or

(i)commits rape on a woman when she is under sixteen years of age; or

(j)commits rape, on a woman incapable of giving consent; or

(k)being in a position of control or dominance over a woman, commits rape on such woman; or

(l)commits rape on a woman suffering from mental or physical disability; or

(m)while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or



(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.— For the purposes of this sub-section, —

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim."

17. The record reveals that P.W.-2 Lal Babu Sah and P.W.-3 Raj Kishore Prasad were declared hostile during the trial as nothing transpired from their testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who



supported the crime in question during the trial. Therefore, the testimony of these two witnesses are not relevant qua establishing guilt of the accused/appellants.

18. It emerges from the deposition of the victim that her statement recorded under Section 164 of the Cr.P.C. is materially contradictory to what she has stated during trial. In her cross-examination, the victim has unequivocally admitted that the earlier statement under Section 164 Cr.P.C. was made under the pressure and influence of the Investigating Officer and that the facts stated therein were not voluntary. Such a clear departure from her earlier version strikes at the root of the prosecution case, particularly when the conviction rests substantially on her sole testimony.

19. In such circumstances, to test the testimony of the victim PW-5 can be said to be reliable and trustworthy. The Apex Court in case of ***Krishan Kumar Malik v. State of Haryana***, held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient



provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellants guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellants."

20. In the case of ***Rai Sandeep v. State (NCT of Delhi)***, reported in, ***(2012) 8 SCC 21***, the Apex Court found totally conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness



should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(emphasis supplied)

21. The Apex Court further in case of **Ganesan v. State**, reported in, **(2020) 10 SCC 573**, held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

22. What emerges from the aforesaid decisions is that where witnesses are found to be neither completely trustworthy nor entirely unreliable, the Court must make a careful effort to ascertain the true origin of the incident. A victim may be treated as a "sterling witness" and her testimony



can be relied upon without additional corroboration, provided its quality and credibility are of an exceptionally high standard. The statement of the prosecutrix should remain consistent throughout, from the initial version to the oral evidence, barring minor discrepancies, and should not give rise to any doubt regarding the prosecution's case. Although, in cases of sexual offences, the testimony of the victim is generally sufficient, a version that is unreliable or inadequate, suffering from evident shortcomings and gaps, may render it difficult to sustain a conviction.

23. When the witness herself disowns the voluntarism and truthfulness of her statement recorded under Section 164 statement, and also when the prosecution fails to offer any plausible explanation for these material inconsistencies, the benefit of doubt must necessarily ensure to the accused. In the above background, I proceed to examine the statement of the victim recorded under Section 164 Cr.P.C. and her testimony is reproduced hereinafter:

Statement of Victim under Section 164 CrPC:

Deposition of witness No for the taken on solemn affirmation on the 24th day of November, 97. My name Rita Kumari, I am son of Radha Kisun Sah. My age is 16 years. I am by religion My nationality is and I belong to Scheduled Caste/Scheduled Tribe. My home is at Mauza Bihia, Police Station Bihia, District Bhojpur. I reside at present in Mauza do, Police-Station do, District Bhojpur, where I am Student of 9th class (Kasturba Balika High school, Bihia).



1. On 19.9.97, when it was time for tuition after school at around 4 ½ Pm, then on that day Jitendra Kumar, the tutor, who used to give me tuition, her sister named Asha met me in the way and said that her brother would give the tuition at the home that day and he had called. Jitendra used to give me tuition at Adarsh Shishu Bihar daily. I went to Jitendra's house accompanied with her sister.

2. Reaching at the house, Jitendra's mother served me sweets in the breakfast. I began to lose my consciousness after having the sweets.

Then I didn't get understand what they are doing with me.

3. My eyes got opened in the train in the night. When I opened my eyes, I saw that Jitendra's father and mother and brother were with me. They

threatened me to kill and said that she would be killed if she would raise alarm.

4. When I come out of the train, I was conscious. It was Delhi station.

After getting off from the station, I was taken to Trilokpuri muhalla. I was kept there for about 1 - 1 ½ month. And Jitendra committed rape on her daily on point of threat.

5. Then Police came and apprehended me and Jitendra. Jitendra's mother and father had escaped from there.

Deposition of Victim (PW-5)

Examination

1. I had been studying in Kasturba High School at the time of the incident. I was the student of 9 class. On 19-09-96 at 4:30 pm, when I was returning from the school, it was time for tuition. At that time I met with Jitendra's sister, Aasha Kumari on the way and she told that today brother would take class at home. He called you. I was taught at Jitendra Aadarsh Shishu Vihar. At the instance of Aasha, I went to Jitendra's house with Aasha. When I reached to Jitendra's house, Jitendra's mother had offered me sweet to eat. After eating sweet, I started feeling dizziness. After that I became unconscious. When I became conscious, I found myself on train. Jitendra, parents of Jitendra and brother of Jitendra, namely Upendra were present there. After that, while threatening me to kill, they told me not to make any noise. Everyone got down from the train with luggage. It was Delhi Railway station. They took me to Trilokpuri Mohalla from railway station. They kept me there for one and half month. Jitendra threatened me there and raped me. I don't know where they again took me from there. The police arrested me and Jitendra at that place. Jitendra's parents and brother fled away from that place. After the incident, I again state that Jitendra raped me once



also before this incident. I was silent out of the fear. My statement was recorded before the Magistrate, on which I put my signature after giving the statement. This is my statement, which is marked as an exhibit 3 (?). Today Jitendra's father and brother are present before court. His mother is (illegible). The identity of (illegible) is not in dispute.

Cross- Examination:

3. The police arrested me after one and half month of reaching Delhl. During that time I was living in Trilokpuri Mohallah. I don't know if the room was on ment or in other form. I was living in one room of that house, I can't tell the number of rooms in that house because I never came out of that room. No one except me and Jitendra had been living in that room. I went outside the room. I went outside the room a couple of times, I went to the doctor. I never told the doctor that Jitendra had tortured me or raped me. I told doctor that I was 21 years old. I went to the court in Delhi. I also stated there that I was 21 years old and I had put my signature on oath. This is the same signature. It is marked as an Exhibit A. When I was in Delhi, I had not filed the complaint anywhere. I didn't go to the market in Delhi. When I went to the court, neither the police personnel was there at that time, nor was any Officer. Advocates were there. I didn't make any complaint to them.

4. The police of Bihiyan Police station had recovered me. The brother was with police. The police of Bihiyan Police station (illegible). After 28 days of arriving at Ara, I had given statement before the Magistrate. I was kept in the police station. My statement was recorded by the Sub-inspector and was standing at the door of the court. The sub-inspector had instructed me to give the statement as per his will or else I shall send you to jail. I have given statement on being tutored by the Sub-inspector. I have not given statement as per my will. I had sent many letters to Jitendra before the incident. I had mentioned in these letters that my age was above 18 years. Therefore he didn't need to worry. I offered him to marry me. Jitendra took me on my request. I was adult on the day of incident and I was above 18 years. Again she states that she was 16-16 1/2 years old.

5. This letter is in my handwriting. It is marked as an Exhibit B. I mentioned in it that my age was above 18 years. I went with Jitendra at per my own will and whatever had happened to me was at per my will. There was no forceful act involved in this. Jitendra's brother and parents didn't go to Delhi and I have mentioned these names at the instance of Sub-inspector. Out of fear of going jail, I did as the Sub-inspector said.



6. During returning from school, there were many girls on the way. Aasha told me before all these girls that brother would teach me at home today. The place where I used to go for tuition, was called Aadarsh Shishu Vihar. Aasha's house is far from where Aasha spoke. I can't tell, the distance. When I reached there, I was alone. The entire incident took place in Bihiyan. There are houses around the house of Jitendra. I can't tell in which Mohallah Jitendra's house is. I never went to Jitendra's house before that day. I can't tell the outline of his house. I had told about going to Aasha's house as narrated by Aasha, Aasha's mother feeding me sweets and my becoming unconscious, were at the instance of the Sub-inspector. The truth is that I didn't go to Aasha's house.

7. Mohan Prasad from Bihta is my uncle. I didn't go to Bihta before the incident. This letter is in my handwriting. It is marked as an exhibit 6 (?). It is not a fact that (illegible). I had not written a letter stating that I had to travel by any vehicle. I don't remember the name of that vehicle traveled by. I had gone to the station earlier.

24. In this regard, a reference may be taken to the observations made by the Hon'ble Supreme Court in ***Rajak Mohammad v. State of Himachal Pradesh, (2018) 9 SCC 248***, wherein the Court has held that when the testimony of a witness suffers from serious infirmities and contradictions going to the root of the prosecution case, it would be unsafe to base a conviction on such evidence.

25. Having considered the submissions advanced on behalf of the parties and upon a careful re-appraisal of the evidence available on record, I find that the medical evidence tendered by PW-1, the Medical Officer, assumes considerable significance. PW-1 has categorically stated in her medical report as well as during deposition that "it cannot be said whether rape



has been committed or not” upon the victim. She further stated that no external or internal injuries were found either on the body of the prosecutrix or on her private parts, nor was any other clinical sign detected that could support the allegation of forcible sexual intercourse. The evidence of PW-1, therefore, does not lend corroboration to the prosecution case. It is true that conviction for the offence of rape can be based on the sole testimony of the victim if it is trustworthy and inspires confidence. In the present case even the medical evidence fails to support the prosecution version creating a serious doubt about the occurrence. When the medical expert clearly states that there is no clinical indication suggestive of rape, the Court is required to examine the prosecutrix’s testimony with greater caution. The inconsistencies between the ocular and medical evidence create uncertainty which goes to the root of the prosecution case.

26. In *Sadashiv Ramrao Hadbe v. State of Maharashtra*, reported in (2006) 10 SCC 92, the Hon’ble Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be



sustained where the prosecution has failed to prove its case beyond reasonable doubt which is reproduced hereinafter:

27. Applying the aforesaid legal principles to the facts of the present case, and in light of the settled principle of law that conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, results in material inconsistencies and cannot be relied upon and also considering the unequivocal medical evidence of PW-1 indicating absence of injuries or signs of sexual assault, also don't corroborate with the versions of the prosecutrix, I am of the view that the prosecution has failed to establish the charge beyond reasonable doubt. Consequently, the appellants are entitled to the benefit of doubt and the conviction of the appellants cannot be sustained.

28. In view of aforesaid discussions of factual and legal aspects, it appears that the prosecution has miserably failed to establish the charges levelled against the appellants/accused during the trial.

29. Accordingly, the present appeals are allowed.

30. The impugned judgment of conviction dated 08.05.2004 and order of sentence dated 11.05.2004, passed by learned Additional Sessions Judge, Fast Track Court No.4,



Bhojpur, Ara in S.T. No.497 of 1998, arising out of Bihia P.S. Case No. 159/1997, is hereby set aside. Consequently, the above-named appellants/accused is acquitted from all the charges levelled against him. Since the appellants are on bail, as such, they are discharged from the liability of their bail bond. The fine deposited by the appellants, if any, shall be refunded to them.

31. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand) to Mr Abhas Chandra, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service for disposal of the present appeal.

32. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	22.11.2025
Uploading Date	19.12.2025
Transmission Date	19.12.2025

