

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.44 of 2004

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Dilip Mahto son of Shiv Bachan Mahto, resident of Village-Kalyanpur, PS-Sonepur, District-Saran at Chapra

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Praveen Kumar, Amicus Curiae
For the Respondent/s : Mrs.Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 06-03-2025

1. The Criminal appeal is arising out of the judgment and order dated 17th/18th of December, 2003 passed in Sessions Trial No. 161 of 2001 on the file of IIIrd Additional Sessions Judge, Saran at Chapra, whereby the appellant was convicted under Section 376 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of ten years.

2. The prosecution case is based on the fardbeyan of the victim/informant/PW-7 (hereinafter referred to as 'X'), who provided her statement before the Station House Officer (SHO) at the Sonepur police station at 10:00 AM, on July 14, 2000.



'X', approximately seven years old and belonging to a poor family, assisted her parents in grazing goats. According to her statement, on July 12, 2000, at around 8:00 PM, she had gone to witness a marriage (Barat) at the residence of one Dinanath Mahto, where the marriage party was stationed at a school. 'X' at around 8:00 PM, went to a paddy field belonging to Ganpat Singh to attend to nature's call. At that time the accused, Dilip Mahto, approached her, lifted her near a Siswan (rosewood) tree belonging to one Yogendra Singh, untied her underwear and pushed her down onto the ground. He covered her mouth with one hand and threatened to kill her, if she makes any noise. The accused then removed her underwear and forcibly inserted his penis into her private parts, committing rape against her. As a result of the assault she started bleeding from her private parts, and experienced difficulty while making movements. The accused then instructed her to return home quietly. Upon reaching home, she narrated the incident to her mother, Lalita Devi (PW-10), her grandmother, Monaki Devi, and



her father/Chulhan Mahto (PW-6). It is further alleged in the fardbeyan that when her father confronted the family of the accused; they threatened to physically harm him and warned him not to report the matter. Out of fear, her father refrained from taking any immediate action. However, on July 14, 2000, (after two days of the incident) the victim and her parents approached the police station to lodge a formal complaint.

3. Basing on the fardbeyan of PW-7/victim, a case was registered against the accused vide FIR No. 0127 of 2000 dated 14.07.2000, on the file of Sonapur Police Station for the offence punishable under Section 376 of the Indian Penal Code.

4. PW-5/Investigating Officer took up the investigation and upon completion of the investigation laid a chargesheet against the appellant for the offence punishable under Section 376 of the Indian Penal Code for which cognizance was taken by the Judicial Magistrate and the case was committed to the court of Sessions for trial. The Learned trial Court framed charges against the



appellant on 11.05.2001 under Section 376 of the Indian Penal Code, which was read over and explained to the appellant in Hindi, for which he pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws. 1 to 11 were examined and Exhibit-1 to Exhibit-5 and Exhibit-y were marked on behalf of the prosecution, which are as follows:-

Prosecution Witnesses	Name of the Prosecution Witnesses
P.W. 1	Raj Ballam Mahto
P.W. 2	Sheo Parshan Mahto
P.W. 3	Amir Lal Mahto
P.W. 4	Bachu Pd. Mahto
P.W. 5	Lalan Prasad (Investigating Officer)
P.W. 6	Chulhan Mahto (Father of the victim)
P.W. 7	'X' (Victim/Daughter of PW-6)
P.W. 8	Shrawan Kumar Mahto (Uncle of the Victim)
P.W. 9	Dr. Kiran Suman (Medical Officer who examined the victim on 14.07.2000)
P.W. 10	Lalita Devi (Mother of the Victim)
P.W. 11	Karmu Mahto (Grand-father of informant)

Sl. No.	Exhibit	Exhibit Details
1.	Exhibit-1	Signature of Sheo Parshan Mahto on the seizure list
2.	Exhibit-1/1	Signature of Bachu Pd. Mahto on the seizure list
3.	Exhibit-2	Fardbeyan



4.	Exhibit-3	FIR
5.	Exhibit-4	Seizure list
6.	Exhibit-1/2	Signature of Chulhan Mahto on the fardbeyan
7.	Exhibit-1/3	Signature of Biltoo Mahto on the fardbeyan
8.	Exhibit-5	Medical Report
9.	Exhibit-‘Y’	Pathological Report of the swab issued by Dr. Deepak Kumar

Further, on behalf of the defence DW-1 and DW-1 were examined and the following Exhibits got marked:

Sl. No.	Exhibit	Exhibit Details
1.	Exhibit-A	Certified copy of sale deed dated 06.04.2003
2.	Exhibit-1-A	FSL report
3.	Exhibit-1-A/1	Serological report
4.	Exhibit-2-A	Forwarding report

6. The accused was examined under Section 313 Cr.P.C. regarding the incriminating evidence found against him. He denied all the allegations and pleaded innocence.

7. On considering the entire oral and documentary evidence on record, the trial Court convicted the appellant for the offence punishable under Section 376 of IPC and sentenced him to



undergo rigorous imprisonment for a period of ten years.

8. Since, there was no representation for the appellant, this Court was constrained to appoint Amicus Curiae Mr.Praveen Kumar on 26.10.2024 to assist the court in the matter.

9. Heard the submissions of the Learned Amicus Curiae for the appellant and the Learned Additional Public Prosecutor for the State.

10. The point for determination in this appeal are as follows:-

(i) Whether the prosecution was able to prove the guilt of the appellant for the offence punishable under Section 376 of IPC beyond reasonable doubt?

(ii) Whether the trial court has rightly convicted the appellant for the aforesaid offence?

11. It is urged by the learned Amicus Curiae that PW-7/victim was seven years old, at the time of the offence and her testimony is unreliable, as it is not corroborated by medical evidence. It was further contended that the trial Court failed to properly



appreciate the evidence on record and convicted the appellant solely based on the Forensic Science Laboratory report, despite the prosecution failing to establish the offence beyond a reasonable doubt.

12. On the other hand, the Learned Additional Public Prosecutor for the State contended that the victim's underwear which was seized by PW-5/investigating officer, was examined by a forensic expert, which clearly confirmed the presence of blood and semen on the underwear, thereby substantiating the prosecution case. Hence, the trial Court rightly convicted the appellant, and the prosecution prayed to confirm the judgment of the trial court and to uphold the appellant's conviction.

13. To adjudicate upon the points framed for determination, it is imperative to re-appreciate the oral and documentary evidence on record. PWs-1 to 4 did not support the case of the prosecution and were declared hostile.

14. PW-5 is the investigating officer. His evidence discloses that the Station Incharge, Ramnath Yadav, handed over the case to him for



investigation. The contents of the fardbeyan and the FIR, bears his signature. The signatures of PW-2 and PW-4 on the seizure list were marked as Exhibit-1 and Exhibit-1/1.

15. PW-5 identified the signatures of Ramnath Yadav on the fardbeyan and the FIR, which are marked as Exhibits 2 and 3. His evidence further disclose that he inspected the place of occurrence, i.e., the paddy field near Ganpati Singh house along with PW-6 i.e. the father of the victim, but did not find anything noteworthy at the place of occurrence. His evidence further disclose that he recorded the statements of PW-6, Kishan Mahto (not examined), Lalita Devi/the mother/PW-10, Sunami Devi (not examined), Karmu Mahto (PW-11)/the grandfather of the victim, and Shravan Mahto/PW-8/the uncle of the victim. His evidence also disclose that PW-7 handed over an orange-colored underwear, at his house, which contained blood stains and was seized under the seizure list, i.e., Exhibit 4. On 14.07.2000, at 5:00 O'clock, he arrested the accused and later remanded him for judicial custody. He also testified that the



victim/PW-7 was referred to the Referral Hospital, Sonapur, for medical examination, and he later received the medical examination report. He also deposed that, as per the instructions of the Deputy Superintendent of Police, the informant was subjected to medical examination by the duly constituted medical board, and the report was subsequently received by the investigating officer. The seized underwear was forwarded through a constable to the forensic laboratory in Muzaffarpur for scientific analysis, however, the Forensic report was not received.

16. As per the evidence of PW-5, it can be construed that the victim underwent medical examination by the medical board. However, the prosecution failed to produce the medical report of the board for the reasons best known to them. His evidence further disclose that he recorded the statements of Rajvallabh Rai, Amir Lal Mahto, and Bachu Prasad identified as PWs-1, 2, and 3 respectively. In cross-examination, PW-5 testified that he did not refer the accused for medical



examination. However, he sent the accused for medical examination on 15.07.2000, wherein the age of the accused was recorded as 19 years. He also admitted that the accused did not make any confessional statement. He further admitted that he did not record the statements of the persons present in the vicinity of the alleged place of occurrence. He also stated that he did not find any defecated material at the place of incident and did not observe any evidence of trampling at the place of occurrence. No forensic or serological examination was conducted to establish whether the semen detected belonged to the accused or to determine the blood group of the victim. Additionally, he testified that the swab analysis report indicates the absence of live or dead spermatozoa. PW-5 specifically admitted that the medical board did not find any conclusive evidence of rape.

17. PW-7 is the victim. Her evidence discloses that on 12.07.2000, she went to attend the wedding ceremony of the daughter of Dinanath, and after watching the procession, she went to a nearby



field to attend nature call. At that moment, the appellant allegedly caught hold of her, lifted, gagged her mouth, and subjected her to rape by penetrating his penis into her private parts resulting in bleeding. Later, she narrated the incident to her father, mother, and uncle. She further testified that her undergarments were removed at the time of the alleged offence; however, bloodstains were observed on her frock and on the ground. During the examination, she specifically stated that her father accompanied her to the police station, where he narrated the entire incident which was duly recorded as the fardbeyan by the Sub-Inspector of Police. Subsequently, her thumb impression was affixed on the document. Her evidence further disclose that her back was scraped by rosewood trees.

18. However, the medical evidence does not corroborate her claims as no bruises, injuries, or scratches were found on the body of the victim.

19. It is relevant to mention that the victim was aged 7 years at the time of incident which occurred on 12.07.2000. However, she was



examined before the trial Court on 11.12.2002. The trial Court has not asked any preliminary questions to the child witness in order to know the competency of the witness/victim, who was aged 9 years.

20. At this juncture, it is relevant to rely upon the judgment of Division of this Court in the case of **Mahesh Trivedi v. State of Bihar** reported in **2024 SCC OnLine Pat 4698** in which the Hon'ble Court has held as:-

“46. At this stage, we would like to refer the decision passed by this Court in the case of Munna Sah (supra) wherein this Court has observed in paragraph nos. 24, 25, 26 and 27 which reads as follows:-

24. 18.1 In the case of Pradeep (supra), the Hon'ble Supreme Court has observed in Para-7 to 10 as under:-

7. We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (PW-1). Under Section 118 of the Evidence Act, 1872 (for short, “the



Evidence Act”), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, Section 4 of the Oaths Act, 1969 (for short “Oaths Act”) is relevant. Section 4 reads thus:

“4. Oaths or affirmations to be made by witnesses, interpreters and jurors.”-(1) Oaths or affirmations shall be made by the following persons, namely:-

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:



Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2). ”

8. Under the proviso to sub-Section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW-1 Ajay, It is mentioned that his age was 12



years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply



its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

10. Before recording evidence of a minor, it is the duty of a judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the



Appellate Court can go into the correctness of the opinion of the Trial Court.

25. 18.2. In the case of P. Ramesh (*supra*), the Hon'ble Supreme Court has observed in Para-13 to 16 as under:- "13. Section 118 [**118. Who may testify.**— All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them."] of the Evidence Act, 1872 deals with the competence of a person to testify before the court. Section 4 [**4. Oaths or affirmations to be made by witnesses, interpreter and jurors.**—(1) Oaths or



affirmations shall be made by the following persons, namely:(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;(b) interpreters of questions put to, and evidence given by, witnesses; and(c) jurors: Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.(2) Nothing in this section



shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.”] of the Oaths Act, 1969 requires all witnesses to take oath or affirmation, with an exception for child witnesses under the age of twelve years. Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in *Dattu Ramrao Sakhare v. State of Maharashtra* [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , where this Court, in relation to child witnesses, held thus : (SCC p. 343, para 5)

“5. ... A child witness if found competent to depose to the



facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.”

14. A child has to be a competent witness first, only then is her/his statement admissible. The rule was laid down in a decision of the US Supreme Court in Wheeler v. United States [Wheeler v. United States, 1895 SCC OnLine US SC 220 : 40 L.Ed. 244 : 159 US



523 (1895)], wherein it was held thus : (SCC OnLine US SC para 5)

“5. ... While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record the decision of the trial Judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous.”



15. In *Ratansinh Dalsukhbhai Nayak v. State of Gujarat* [*Ratansinh Dalsukhbhai Nayak v. State of Gujarat*, (2004) 1 SCC 64:2004 SCC (Cri) 7. Subsequently, relied upon in *Nivrutti Pandurang Kokate v. State of Maharashtra*, (2008) 12 SCC 565 : (2009) 1 SCC (Cri) 454] , this Court held thus : (SCC pp. 67-68, para 7)

“7. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are



amenable to tutoring and often live in a world of makebelieve. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

16. In order to determine the competency of a child witness, the Judge has to form her or his opinion. The Judge is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In



criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7] A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner. [Sarkar, Law of Evidence, 19th Edn., Vol. 2, Lexis Nexis, p. 2678 citing Director of Public Prosecutions v. M, 1998 QB 913 :(1998) 2 WLR 604 : (1997) 2 All ER 749 (QBD)] If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”



26. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that before recording evidence of a minor, it is the duty of Judicial Officer to ask preliminary question to him/her with a view to ascertain whether the minor can understand the questions put to him/her and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. The Judge has to make a proper preliminary examination of a minor by putting appropriate questions to ascertain whether the minor is capable of understanding the question put to him. It can be further said that in order to determine the competency of the child witness, the Judge has to form his/her opinion. The Judge is at liberty to test the capacity of a child witness. The competency of a child witness can be ascertained by questioning him to find out the



capability to understand the occurrence witnessed and to speak the truth before the Court. In criminal proceedings, the person of any age, is competent to give evidence if he is able to understand questions put as a witness and give such answers to the questions that can be understood. A child of tender age can be allowed to testify if he has the intellectual capacity to understand the questions and give rational answers thereto. However, a child becomes incompetent in a case the Court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner.

27. Keeping in view the aforesaid decisions, if the facts of the present case are examined, it transpires that the concerned Trial Judge has not carried out the aforesaid exercise by putting question to the child witness with a view to ascertain whether the PW-8 (child witness) is capable to understand the question put to her.



Thus, we are of the view that the reliance placed by the learned Trial Court only on the deposition given by PW-8 who is the child witness, aged about 10 yrs. and was aged about 7.5 yrs. at the time of occurrence, is misplaced. Therefore, the Trial Court has wrongly placed the reliance upon the said deposition of the child witness."

21. It is pertinent to deal with the evidence of PW-9/the medical officer, who examined the informant/victim/PW-7. The evidence of PW-9 clearly discloses that she examined the victim on 14.07.2000 at about 1:30 p.m. at the Referral Hospital, Sonapur, and upon examination did not observe any swelling or ruptures in the vagina. The hymen was found to be intact and did not admit even one finger, and there was no any evidence of hymen tear. She further testified that there were no abrasions or external injuries on the body of the victim. However, she collected vaginal swabs and slides for pathological analysis and forwarded them to hospital for further examination. She opined that



there was no medical evidence indicating of rape, and Exhibit-Y, the Pathologist's Report, marked through her, was chemically examined and did not reveal the presence of live or dead spermatozoa. According to the evidence of PW-9/doctor, there is no medical evidence to support the case of the prosecution in any manner.

22. Even in the absence of medical evidence, the trial court convicted the appellant guilty of the offence, solely based on Forensic Science Laboratory report concerning the orange-colored underwear. Forensic expert Ramashankar Singh was examined as CW-1, and Exhibit-1/A was marked as the forensic report, which discloses the presence of blood and semen, on the said underwear. However, the prosecution miserably failed to establish beyond a reasonable doubt that the blood found on the underwear belonged to the victim and that the semen was that of the accused. It is incumbent upon the prosecution to establish a direct nexus between the accused and the alleged offence. According to the evidence of PW-5, the accused was never



subjected to medical examination. Additionally, as per the fardbeyan, the age of the appellant was recorded 17 years at the time of incident. The trial court, while appreciating the evidence, observed that the private parts of both the victim and the appellant were not fully developed and, therefore, the possibility of penal penetration was ruled out. Consequently, it was inferred that there was no complete insertion of appellant's penis which explains the absence of injury found on the victim and the intact condition of her hymen.

As per Section 375 of Indian Penal Code, Rape is defined as:-

375. Rape-A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:-

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death, or of hurt.



Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent whom she is under sixteen years of age.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception- Sexual intercourse by a man with his own wife, the wife not being under (fifteen) years of age, is not rape.

23. As per the explanation given under Section 375 of the Indian Penal Code i.e., rape. Penetration is sufficient to constitute the offence of rape. As per the above explanation, in the absence



of penetration the act does not satisfy the definition sexual intercourse necessary to constitute the offence of rape. In such circumstances, If at all there was an attempt to commit rape, the appropriate charge ought to have been framed under Section 375 r/w Section 511 of the Indian Penal Code. However, no charge was framed against the appellant for the offence punishable under Section 375 r/w Section 511 of the Indian Penal Code. Therefore, the trial court erred in its assessment of the evidence on record and the conviction of the appellant for the offence punishable under Section 375 of the Indian Penal Code is liable to be set aside.

24. Apart from the evidence of PW-5/the Investigating Officer, PW-7/the victim and PW-9/Medical Officer, the evidence on record includes that of the statement of family members of the victim, namely PW-6 (father of the victim), PW-8 (uncle of the victim), PW-10 (mother of the victim), and PW-11 (grandfather of the victim). The evidence of PW-8 and PW-10 merely indicate that they learned about the incident from the victim rendering their



testimonies hearsay evidence. However, the evidence of PW-6 and PW-10 disclose that the victim went to attend the marriage of the daughter of Dinanath Mahto and returned home in tears at about 9:00 p.m. that night, alleging that the appellant had forcibly taken her away and committed rape in the field of Yogendra Singh.

25. However, in the cross-examination PW-6 admitted that he did not find any injury/wound on the victim's body.

26. The evidence of PW-5 contradicts that of PW-6 on two aspects:

(i) PW-5 specifically stated that PW-6 handed over the orange-colored underwear of the victim; however, PW-6's testimony is notably silent on this matter.

(ii) PW-5's evidence indicates that PW-6 accompanied him to the place of occurrence; however, the evidence of PW-6 clearly indicates that he never visited to the place of occurrence and did not accompany PW-5.



27. Furthermore, PW-6 did not make any statement regarding the alleged handing over of the orange-colored, blood-stained underwear purportedly belong to PW-7. Furthermore, PW-6 is a child witness and the trial Court did not take any precaution, while recording the evidence of the victim to know the competency of the witness as per the ratio of the Apex Court in the case of Mahesh Trivedi (supra).

28. PW-10 is the mother of the victim. Her evidence is silent regarding the handing over of the underwear or the presence of injuries on the body of the victim on the date of the alleged offence.

29. In light of the inconsistencies in the prosecution evidence, this Court is of the considered view that the prosecution has miserably failed to establish the guilt of the appellant under Section 375 of the Indian Penal Code beyond reasonable doubt. The trial court has erroneously convicted the appellant for the said offence.

30. With the abovesaid discussion, this Court is of the considerable view that the judgment and the conviction by the trial court are legally



unsustainable and warrant interference and is thus, liable to be set aside.

31. In result, the criminal appeal is allowed. The judgment and order dated 17th/18th of December, 2003 passed by IIIrd Additional Sessions Judge, Saran at Chapra, in Sessions Trial No. 161 of 2001 is hereby set aside and the appellant is acquitted for the aforesaid offence.

32. The record reveals that the appellant was enlarged on bail vide order dated 21.05.2007. Hence, the bail bonds of the appellant shall stand cancelled.

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2025
Transmission Date	19.04.2025

