

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.928 of 2025**

Arising Out of PS. Case No.-366 Year-2007 Thana- KAHALGAON District- Bhagalpur

Dimpal Kumari, W/O Suman Pandit, Resident of Village- Ekchari, P.S-  
Rasalpur, District- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Kamdev Pandit, S/O Late Ramsewak Pandit, R/O Village- Ekchari, P.S-  
Rasalpur, Distt.- Bhagalpur.
3. Suman Kumar @ Bambam, S/O Hareram Pandit, R/O Village- Ekchari, P.S-  
Rasalpur, Distt.- Bhagalpur.
4. Hareram Pandit, S/O Late Ramsewak Pandit, R/O Village- Ekchari, P.S-  
Rasalpur, Distt.- Bhagalpur.

... .. Respondent/s

**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Appellant/s  | : | Mr. Mohit Shriwastava, Advocate |
|                      |   | Mr. Ayush Kumar, Advocate       |
| For the Respondent/s | : | Mr. Dilip Kumar Sinha, APP      |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**

**and**

**HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 24-09-2025**

The present criminal appeal has been preferred under Section 413 of the B.N.S.S., 2023 against the judgment of acquittal dated 08.05.2025 passed by the learned District & Additional Sessions Judge-I, Bhagalpur in S.T. Case No. 636 of 2012, arising out of Kahalgaon (Rasalpur) P.S. Case No. 366 of 2007, whereby Respondent Nos. 2 to 4 have been acquitted by the learned trial court from the charge of Sections 366A and 376/34 of the Indian Penal Code.



2. The prosecution case, according to the *fardbeyan* of the informant, is that on 28.09.2007 at about 8:30 AM when she was going to college at Sabour, on the way at Village Bholshar, Kamdev Pandit (respondent No. 2) and Hareram Pandit (respondent No. 4) met her and suggested her to marry with Bambam @ Suman Pandit (respondent No. 3) as he works in Delhi and that after marriage they will stay in Delhi and they(respondent Nos. 2 and 4) will bear the expenses. They further informed the informant that Bambam @ Suman Pandit has come to Bhagalpur and he is at Railway Station. The informant revealed that she was in love affair with Bambam @ Suman Kumar. Both Kamdev Pandit and Hareram Pandit took her to Railway Station on Tempo and on the way Kamdev Pandit purchased cloth for her and also gave Rs 500/- to her. Bambam @ Suman was at Railway Station. Kamdev Pandit purchased tickets for them and Bambam @ Suman took her to Delhi assuring her for marriage. On 29.09.2007, informant reached Delhi and went at Azad Nagar with Bambam @ Suman, lived with Bambam @ Suman for two nights during which Bambam @ Suman made physical relation with her and on protest by the informant, he stated that he will marry her. Informant came to know on mobile phone that her father has



given *Sanha* in police station regarding her missing and police is inquiring from Hareram Pandit. Hareram Pandit informed Bambam on mobile phone that police is searching them. Bambam told her that their parents became ready for their marriage and on believing him, she returned to Bhagalpur on 02.10.2007. Kamdev Pandit and Hareram Pandit took her to Prasadi Mandal at Ghogha on tempo from Bhagalpur Railway Station saying that their marriage will be taken place there, and on that night she stayed there. On 03.10.2007, the informant said Kamdev Pandit to call her parents, then the accused persons said that no marriage will be taken place now because her father has filed the case. Bambam @ Suman Pandit ran away from there and somehow the informant informed her parents on phone.

3. On the basis of *fardbeyan* of the informant, Kahalgaon (Rasalpur) P.S. Case No. 366 of 2007 was instituted under Sections 366A and 376/34 of the I.P.C. and investigation was taken up by the police. The police after investigation submitted charge-sheet against respondent Nos. 2 to 4 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 six witnesses i.e. PW1 Pravakar Pandit, PW2 Shila Devi, PW3 Bindeshri Mandal, PW4 Dimpal Kumari, PW5 Vinod Kumar and PW6 Dr. Pranav Dwivedi. The prosecution has also produced certain documents as Exhibits i.e. Ext. 1- signature of informant's father on *fardbeyan*, Ext. 1/1- signature of informant on *fardbeyan*, Ext.2- signature of informant on her statement recorded u/s 164 CrPC, Ext.3- formal FIR, Ext. 4- charge-sheet No. 485/07 dated 31.12.2007, Ext. 4/1- charge-sheet No. 255/08 dated 31.07.2008, Ext. 5- Matriculation admit card of victim/informant, Ext. 5/1- Matriculation certificate of informant/victim, Ext. P-6/PW-5- entire *fardbeyan*, Ext. P-6/1/PW-5- forwarding upon *fardbeyan*, Ext. P-6/2/PW-5- endorsement of registration of case upon *fardbeyan*, Ext. P-7/PW-5- signature of SHO Ajay Kumar Mishra on formal FIR and Ext. P-8/PW-6- medical report. The defence has also examined three witnesses, viz., DW1 Ghanshyam Mandal, DW2 Prasadi Mandal and DW3 Balram Pandit. 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.



5. 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 miserably failed to avail opportunity and has not produced any substantive piece of evidence to prove its case beyond shadow of all reasonable doubts against the accused persons. The learned trial court further came to the conclusion that on the basis of the prosecution evidence available on record, the accused persons cannot be convicted and no offence against them is made out and that the charges levelled against them has not been proved beyond shadow of all reasonable doubts.

6. It has been submitted by the learned counsel for the appellant that the learned trial court has failed to appreciate the evidence of the prosecution witnesses, especially PW-4, the victim, who has explained the prosecution case as per 164 Cr.P.C. statement is consistent and she supported the prosecution case. He further submits that the learned trial court has also failed to consider the age of the victim at the time of occurrence if it is consensual, which was proved by her matriculation marksheet.

7. Learned counsel for the respondent-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 before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present case.

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

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

10. On a careful scrutiny of the evidence available on record, this Court finds that the prosecution case is riddled with material infirmities. The FIR was lodged on 04.10.2007, whereas the alleged occurrence is said to have taken place on 28.09.2007. While delay in lodging the FIR is not always fatal, it is a relevant circumstance which casts a duty upon the Court to closely scrutinise the prosecution case, as reiterated in ***State of H.P. v. Gian Chand*** reported in (2001) 6 SCC 71, para 12 of the judgment, which reads as under:

*“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any*



*explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution.”*

11. Further in, **Ravi v. Badrinarayan, (2011) 4 SCC 693**, the Hon’ble Supreme Court has observed in paragraph 18 of the judgment as follow:

*“18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.”*

12. Coming to the charge under Section 366A of the Indian Penal Code, the provision stipulates as under:

*“Sec. 366A: 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...”*

13. The ingredients of this offence are: (i) the prosecutrix must be under 18 years of age; (ii) she must have been induced to go from any place or to do an act; and (iii) such inducement must be with the intention, or knowledge, that she will be forced or seduced to illicit intercourse with another person.

14. In the present case, none of these ingredients are fulfilled. The prosecutrix was admittedly a major at the relevant time. More importantly, she herself stated in her FIR that she went with the accused willingly, as part of a love affair between them. Once the prosecutrix admits that she accompanied the accused out of her own volition and affection, there is no question of “inducement” within the meaning of Section 366A of the Indian Penal Code. Further, there is no allegation that she was procured for another person. The entire narrative is confined to her relationship with the accused alone. The very foundation of Section 366A of the I.P.C. is, therefore, absent,



and the charge under this section cannot be sustained.

15. The prosecution has also alleged that physical relationship was established on the pretext of marriage. It is now well settled that a mere breach of promise to marry does not vitiate consent so as to constitute the offence of rape. The Hon'ble Supreme Court in ***Pramod Suryabhan Pawar v. State of Maharashtra*** reported in (2019) 9 SCC 608, has clarified that for consent to be vitiated, the promise of marriage must be shown to be false from the very inception, given with no intention of being adhered to, as observed in paragraph 18 of the judgment which reads as under:

*“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”*

16. Similarly, in ***Deepak Gulati v. State of Haryana***



*reported in (2013) 7 SCC 675*, the Hon'ble Supreme Court explained that consensual physical relations in a genuine affair cannot be treated as rape merely because the promise of marriage could not later be fulfilled, as observed in para 21 of the judgment, which reads as under:

*“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of*



*circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”*

17. In the present case, there is no reliable evidence to suggest that the promise was false at the inception; hence, the allegation under Section 376 of the IPC is not attracted.

18. During trial, the informant attempted to improve her version by deposing that the physical relationship was against her will, contrary to her earlier admission of consent. Such a material improvement shakes the very root of the prosecution case. It is trite that the testimony of a prosecutrix, if credible and trustworthy, may form the sole basis of conviction. However, when her evidence suffers from serious inconsistencies on the core issue of consent, it becomes unsafe to rely on it. In ***State of M.P. v. Dayal Sahu reported in (2005) 8 SCC 122***, the Hon’ble Supreme Court held that improvements and contradictions on material particulars render the testimony unreliable unless corroborated by other evidence, as observed in paragraph 14 of the judgment, which reads as under:



*“14. A plethora of decisions by this Court as referred to above would show that once the statement of the prosecutrix inspires confidence and is accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.”*

19. In cross-examination, the informant admitted that she was married to one Sanjay Kumar Pandit prior to the alleged occurrence and had a son and daughter from the said wedlock.



These facts were neither disclosed earlier nor investigated by the Police. The Investigating Officer candidly admitted that he did not enquire into this earlier marriage or the existence of children. Such investigative lapses are serious, though it is settled that a defective investigation by itself is not a ground for acquittal if the prosecution otherwise proves the case. The Hon'ble Supreme Court in ***C. Muniappan v. State of T.N.*** reported in (2010) 9 SCC 567, observed that lapses in investigation may not *ipso facto* result in acquittal, but if the defects go to the root of the matter and prejudice the accused, the benefit must go to him, as observed in paragraph 55 of the judgment, which reads as under:

*“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a*



*legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandrakant Luxman v. State of Maharashtra [(1974) 3 SCC 626 : 1974 SCC (Cri) 116 : AIR 1974 SC 220] , Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] , Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : AIR 1998 SC 1850] , Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] , State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC 185] , Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] , Allarakha K. Mansuri v. State of Gujarat [(2002) 3 SCC 57 : 2002 SCC (Cri) 519] and Ram Bali v. State of U.P. [(2004) 10 SCC 598 : 2004 SCC (Cri) 2045] ).”*

20. In the present case, the failure to investigate material facts such as prior marriage and children, coupled with the concealment of these facts by the prosecutrix, casts serious



doubt on the prosecution case.

21. It further appears that there is non-compliance with Section 53A of the Cr.P.C. No proper medical or forensic examination was conducted in accordance with law. The Hon'ble Supreme Court in ***Krishan Kumar Malik v. State of Haryana*** reported in (2011) 7 SCC 130, emphasised the importance of DNA and scientific evidence in rape cases and held that failure to collect such evidence is a serious lacuna, as observed in paragraph 44 of the judgment, which reads as under:

*“44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23-6-2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.”*



22. The medical evidence in the present case is itself doubtful. Dr. Punam Mishra, who had examined the prosecutrix, was not examined during the trial; instead, her son was produced to prove the report.

23. In the totality of the circumstances, this Court finds that the prosecution has failed to establish the charges under Sections 366A and 376 of the IPC beyond reasonable doubt. The testimony of the prosecutrix is inconsistent and unreliable, the investigation is defective, the medical evidence is infirm, and there is non-compliance with statutory requirements. Criminal conviction requires proof beyond reasonable doubt, and where the testimony of the prosecutrix does not inspire confidence and is unsupported by cogent evidence, the accused is entitled to the benefit of doubt.

24. 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.

25. 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 is 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 vs. State of Tripura (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.....”*

26. In the case of ***Ghurey Lal versus 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.”*

27. 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.

28. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

29. Accordingly, the present appeal is dismissed.

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

**(Sudhir Singh, J.)**

**(Rajesh Kumar Verma, J.)**

Rajesh/-

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