

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.175 of 2014

Arising Out of PS. Case No.-152 Year-2008 Thana- MANIHARI District- Katihar

Mahtab Ali Son of Md. Akbal, Resident of Village- Soharadangi, Police
Station- Manjhari, District- Katihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Nazia Shabah, Amicus Curiae
For the State	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 19-02-2026

No one appears on behalf of the appellant.

2. On the last occasion, i.e., 18.02.2026, when this appeal was taken up for final hearing, no one appeared on behalf of the appellant.

3. Considering this aspect, Ms. Nazia Shabah (AUIN No. 103824), learned Advocate present in the courtroom, is appointed to assist this Court as *Amicus Curiae* in this appeal.

4. After some time, the matter is taken up again. Ms. Nazia Shabah, learned *Amicus Curiae*, and Ms. Anita Kumari Singh, learned Additional Public Prosecutor for the State, are heard at length.

5. The instant criminal appeal has been preferred by the appellant, Mahtab Ali, against the judgment of conviction dated



22.02.2014 and the order of sentence dated 26.02.2014 passed in Sessions Trial (S.T.) No. 470 of 2010 by the Court of the learned Adhoc Additional Sessions Judge- 1st, Katihar, whereby and whereunder the appellant has been convicted of the offence under Section 376 of the Indian Penal Code (in short, 'IPC') and sentenced to undergo rigorous imprisonment for seven years along with a fine of Rs. 5,000/-. In default of payment of fine, he has been directed to undergo simple imprisonment for an additional period of two months.

Prosecution Story:-

6. As per prosecution, the prosecutrix was a minor girl aged about 16-17 years at the time of occurrence. The house of the prosecutrix and the house of the accused are adjacent to each other, separated only by a small boundary(*tati*). About six and half months prior to the filing of the case, when the prosecutrix had gone to the bamboo grove (*Bansbari*) of accused persons situated behind her house to attend the call of nature, the accused No. 1 (the appellant) forcibly committed rape with her without her consent. When she attempted to raise her alarm, the accused no.1(appellant) threatened to kill her, if she disclosed the incident. Despite her resistance and attempt to save her modesty, she could not prevent that act of the appellant. After the occurrence, the



prosecutrix wept and expressed her concern that she was an unmarried girl and questioned the appellant who would marry her then the accused no.1 (appellant) assured her that he would marry her and asked her not to worry. On the assurance of marriage, the accused no. 1 (appellant) continued to establish sexual relations with her on several occasions. As per prosecution, the prosecutrix, being a minor and believing the promise of marriage to be true, submitted herself to such intercourse under that belief. As a result of the repeated sexual intercourse, the prosecutrix became pregnant and at present (at the time of filing of complaint) her pregnancy was about six months. Upon knowing about her pregnancy, she informed the accused no. 1 (appellant), who again assured her that he would marry her soon. However, when the pregnancy reached about three months, the accused persons started pressurizing her to abort the pregnancy, promising that marriage would be solemnized after the abortion. The prosecutrix and her guardians refused to terminate the pregnancy, whereupon the accused persons declined to perform the marriage. Subsequently, the father of the prosecutrix convened a village Panchayati wherein several villagers were present. In the said Panchayati, the accused no. 1 (appellant) admitted his guilt and agreed to marry the prosecutrix. A date for marriage was fixed on 2-06- 2008.



However, on the said date, the marriage was not solemnized. When the father of the prosecutrix and others approached the accused persons regarding the same, the accused persons flatly refused to solemnize the marriage, stating that their earlier assurance was merely a tactic to gain time. Thereafter, the prosecutrix along with her father approached the police station to lodge an FIR, but as the Officer-in-Charge was absent and they were advised to file a complaint before the court. Hence, this complaint case was filed.

7. On the basis of the complaint petition filed by the victim herself, Complaint Case No. 1924/2008 came to be registered. Subsequently, the said complaint was forwarded for institution of a formal FIR, pursuant where to Manihari P.S. Case No. 152 of 2008 was registered for the offences punishable under Sections 376, 493, 420 and 120(B) of IPC. Consequently, the criminal law was set in motion and investigation was taken up in accordance with law.

8. After completion of the investigation, the police submitted a charge-sheet against the appellant for the offence under Section 376 of IPC. Thereafter, the learned Judicial Magistrate took cognizance of the offence under Section 376 of IPC and committed the case to the Court of Sessions for trial.



9. The appellant stood charged for the offence under Section 376 of IPC. The charge was read over and explained to him in Hindi, to which he pleaded not guilty and claimed to be tried.

10. During the trial in ocular evidence the prosecution examined altogether ten witnesses who are as under:-

Sl. No.	Name	Relevancy
PW-1	Md. Saidur Rahman	Villager
PW-2	xxxxx	The father of the victim
PW-3	Sajjad Ali	Villager
PW-4	Mubarak Hussain	Neighbour of the victim
PW-5	Xxxxx	The victim
PW-6	Pawan Kumar Singh	I.O.
PW-7	Dr. Ram Rekha Suman	Doctor who examined the dead child of the victim
PW-8	Irfan Ali	Villager
PW-9	Inamul Haque	Villager
PW-10	Junab Ali	Villager

11. In documentary evidence, the prosecution proved and exhibited the following documents:-

Sl. No.	Relevancy
Ext.-1, 1/1, 1/2	Report of taking blood samples
Ext.-2	Chargesheet
Ext.-3	Formal FIR
Ext.-4	Postmortem report of victm’s child
Ext.-5 and 5/1	List of exhibits sent for examination of blood samples

12. After completion of the prosecution evidence, the statement of the appellant was recorded by the trial court under



Section 313 of the Cr.P.C., wherein he denied the incriminating circumstances appearing against him in the prosecution evidence and claimed himself to be innocent. However, the defence of the accused was that the prosecutrix falsely implicated him in the present case and he produced the defence evidence that he had solemnized marriage with prosecutrix on 25.07.2008.

13. In support of his defence the appellant adduced evidence comprising one oral witness namely, D.W.-1 Jay Prakash Pandey. He also produced documentary evidence which was marked as Exhibit-A (certified copy of charge-sheet in Manihari Case No. 83/2008 and Exhibit-B (marriage affidavit).

14. While convicting the appellant, the trial court observed that the prosecutrix (PW-5) fully supported the prosecution case and her testimony remained unshaken in cross-examination. Nothing substantial was brought on record to discredit her version regarding the commission of rape, the convening of Panchayati, and the admission made by the accused therein and further the accused (appellant) himself admitted matrimonial relationship with the victim as having commenced on 25-07-2008. The trial court also placed reliance on the testimonies of PWs- 1, 2 3, 4, 9, and 10, who affirmed that a Panchayati meeting was held and the Investigating Officer (PW-6) also



supported the prosecution case and confirmed that during investigation it was found that a Panchayati had been held. The defence plea of false implication and pregnancy by some other person was found to be untenable, particularly in view of the subsequent marriage between the appellant and the prosecutrix and absence of any cogent evidence supporting the defence version. On an overall appreciation of the oral and documentary evidence available on record, the learned trial court held that the prosecution had proved the charge under Section 376 of IPC beyond reasonable doubt and, accordingly, convicted the accused.

Submissions made by learned Amicus Curiae:-

15. Ms. Nazia Shabah, learned Amicus Curiae, submits that there was an inordinate delay of several months in taking legal action by the victim or her family members with regard to the alleged offence of rape, which was committed by the appellant with the victim, six and a half months prior to the filing of the complaint. Though in the complaint, written and typed in English, some events that happened subsequent to the commission of the alleged rape are mentioned, the evidence of the prosecution witnesses, particularly that of the victim and her father, is not fully corroborative of those subsequent events. For determination of the paternity of informant's child, who died just some days after birth,



blood and bone marrow samples were taken from the body of the deceased child and the blood samples of the appellant, and the informant, were also taken and sent for DNA examination; however, before the trial court, the prosecution failed to produce the conclusion of the DNA examination with regard to those samples. Hence, scientifically, the paternity of the complainant's child, who was alleged to be the result of the alleged sexual relationship, could not be established. Learned Amicus Curiae further submits that regarding the Panchayat meeting between the informant's family and the appellant's family, there are some serious contradictions among the testimonies of the prosecution witnesses; however, one thing is quite clear from the defence evidence (Exhibit-B), that the appellant accepted his matrimonial relationship with the informant as having commenced on 25.07.2008 or before that. On the other hand, it is also an admitted position that there was a criminal case bearing Manihari P.S. Case No. 83 of 2008 lodged against one Aftab Ali by Sahana Khatoon, and the appellant took the defence that, due to that case, a false story was fabricated by the prosecution party to create pressure for withdrawal of that case.



Submissions made by learned Addl. Public

Prosecutor for the State:-

16. On the other hand, Ms. Anita Kumari Singh, learned APP appearing for the State, submits that though the prosecution failed to produce the DNA test report of the informant's child, but from the defence evidence, Exhibit-B, the appellant himself accepted his matrimonial relationship with the informant, which can be deemed to be supportive material to the victim's allegation as to a physical relationship having been established by the appellant with her, as otherwise there was no need for the appellant to enter into a matrimonial relationship with the informant. Learned APP further submits that all the prosecution witnesses remained consistent in proving the factum of holding a Panchayat meeting between the appellant's family and the informant's family and also remained consistent in proving that, in that meeting, the appellant accepted his wrongdoing committed by him with the informant and also accepted the informant's son as his own son, and these materials are sufficient to bring home the charge under Section 376 of the IPC, for which the appellant has been convicted.



Consideration and Analysis:-

17. I have heard both sides, perused the evidence adduced by both sides available on the record of the trial court, and taken into consideration the appellant's statement recorded under Section 313 of the Cr.P.C., as well as the findings recorded by the trial court in the impugned judgment.

17.1. The complaint petition filed by the victim herself is in English and typed, and the same bears no date and simply contains the signature of the complainant and the narration of the incident alleging commission of the offence of rape, indicating that a legal mind was applied in typing the said complaint, which was sent to the police by the Chief Judicial Magistrate. The informant, examined as PW-5, admitted in cross-examination that she studied up to the 7th standard and did not know English, and in her examination-in-chief she stated that the advocate wrote the application, read the same before her, and then she made her signature on every page of the said application. However, the informant's application is in typed form and, further, she did not state in her examination-in-chief that she had understood the contents of the FIR before signing it. This aspect of the FIR raises a question regarding its credibility.



17.2. Now, I come to the allegations levelled by the victim as well as other relevant facts emerging from her complaint/FIR. The informant revealed her age as 16–17 years in the complaint, which was filed in the month of July, 2008; however, before the trial court, the complainant/informant revealed her age as 25 years while recording her evidence on 13.02.2013. If this declared age is taken into consideration, then the victim's age must have been about 20 years at the time of commission of the alleged occurrence. Hence, a wrong statement with regard to the age of the informant was given in the complaint. As far as the commission of the first occurrence of establishing a sexual relationship with the victim by the appellant is concerned, the same is stated to have taken place six and a half months prior to the filing of the complaint; however, paragraph no. 3 of the complaint, in which that incident was described, does not contain the time of that incident. In this regard, the allegation as to committing rape upon the complainant by the appellant appears to be vague to some extent. In view of the facts stated in the complaint and in the light of the evidence of the victim's relatives, it is evident that the alleged occurrence of rape had come to the knowledge of the victim's family members immediately after its happening, but legal action for lodging the FIR was taken several



months thereafter. Though, in the complaint, the victim tried to explain the said long delay, she revealed that the appellant assured her that he would marry her and, on that assurance, he established a sexual relationship with her several times. When she became pregnant, she asked the appellant to marry her immediately, but he did not pay any heed and again assured her that he would marry her soon, using delaying tactics. Thereafter, he and his family members started pressurizing her to abort her unborn child, and when she refused to do so, the accused flatly denied marrying her. In respect of these events, some panchayat meetings were also held between the appellant's family and the victim's family, as per the evidence of the prosecution witnesses. However, in this regard, some material prosecution witnesses, PW-1 and PW-2, stated contradictory facts. Among them, PW-2 is very important, as he is the father of the victim. PW-1 stated in his examination-in-chief that Makbool, the father of the victim, called the panchayat meeting, in which he and others went to Sohradangi village, and that the meeting was held on account of the birth of a male child to the victim. In that meeting, the appellant allegedly accepted his wrongdoing and admitted that the child was his. In this way, according to this witness, the said panchayat meeting was called by the victim's father. However, PW-2, the father of the victim,



deposed in cross-examination that he was not present at the panchayat meeting and had only heard about it. He further deposed in cross-examination that at the time of holding the panchayat meeting, his daughter was carrying a ten-month-old pregnancy, whereas, as per the evidence of the victim, she was carrying a seven-month-old pregnancy at that time. In view of these contradictions, the factum of holding the panchayat meeting and the alleged acceptance by the appellant regarding the victim's child being his, as well as his acceptance of the alleged wrongdoing, do not appear to be believable. Though samples of blood and bone marrow, etc., were taken from the body of the deceased child and blood samples were taken from the victim and the appellant for DNA examination to ascertain the paternity of the child, who died just a few days after his birth but very surprisingly, the prosecution remained careless in bringing the conclusion of the DNA examination before the trial court. The trial court itself also remained careless in not calling for the said report from the concerned Forensic Science Laboratory (FSL), and the conclusion of DNA examination was very important to substantiate the victim's allegation. Though the appellant, by adducing his own defence evidence (Exhibit-B), accepted that he and the informant/complainant entered into a matrimonial relationship on



25.07.2008 or before that but merely by this fact the allegations levelled by the informant in her complaint/FIR cannot be deemed to have been proved beyond reasonable doubt.

Conclusion:-

18. In view of the facts and circumstances emerging from the evidence adduced by the prosecution and defence, as discussed above, this Court is of the considered opinion that the prosecution did not remain able to prove the charged offence punishable under Section 376 of the IPC beyond reasonable doubt, as there are certain circumstances creating serious doubt in the credibility of victim's allegations such as the long delay in taking legal action by the victim and her family members with regard to the commission of the alleged rape, despite the same having come to their knowledge after its happening; serious contradictions appearing in the testimony of the prosecution witnesses mainly with regard to the prosecution's plea as to holding the panchayat meeting and the appellant's admission his wrongdoing in the said panchayat meeting; and the prosecution's failure to establish the paternity of the victim's child as that of the appellant. Accordingly, this Court is not persuaded to affirm the conviction of the appellant for the offence punishable under Section 376 of the IPC; hence, the judgment of conviction dated 22.02.2014 and the order of sentence dated 26.02.2014, passed by the Court of the learned Adhoc



Additional Sessions Judge-1st, Katihar, in Sessions Trial (S.T.) No. 470 of 2010 arising out of Manihari P.S. Case No. 152 of 2008, convicting and sentencing the appellant for the offence punishable under Section 376 of the IPC, are hereby set aside.

19. The appeal is allowed.

20. The appellant is on bail. Accordingly, his bail bonds stand cancelled forthwith, and he, along with his sureties, is hereby discharged from their respective liabilities.

21. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the concerned court for compliance and for taking necessary action.

22. Ms. Nazia Shabah, learned *Amicus Curiae*, shall be entitled to remuneration in terms of the Notification dated 18.05.2017 issued by the State Government. The said remuneration shall be paid by the Patna High Court Legal Services Committee for the assistance rendered by her to this Court as *Amicus Curiae*.

(Shailendra Singh, J)

maynaz/Rajiv-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.02.2026
Transmission Date	24.02.2026

