

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.999 of 2018

Arising Out of PS. Case No.-212 Year-2015 Thana- PURNEA SADAR District- Purnia

=====

Jitan Chaudhary @ Jitendra Chaudhary @ Jiten Choudhri, S/o Etwari Chaudhary, R/o Vill.- Daliyaghat, P.S.- Sadar (Muffasil), Purnia, District- Purnia.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Navin Kumar, Adv. Mr. Rakesh Kumar Jha, Adv.
For the State	:	Mr. Abhimanyu Sharma, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)
Date : 06-07-2026

In our journey in dispensing with justice, we often come across some cases, the culpability of which is not even understood and digested by us. The instant case is highly representative of such cases, wherein, allegedly, a wrong was committed by a young man of 25 years upon a lady aged about



75 years (as per the ossification test, stated to be 60 years.)

2. The instant appeal challenges the judgment of conviction dated 27.02.2018 and order of sentence dated 05.03.2018 passed by the learned Sessions Judge, Purnea in connection with Sessions Trial No. 429 of 2015/CIS No. 388 of 2015, arising out of Purnea Sadar P.S. Case No. 212 of 2015 (G.R. Case No. 2483 of 2015), whereby, the accused/appellant has been convicted for the offence punishable under Section 377 of the Indian Penal Code (*in short the I.P.C.*) and has been sentenced to undergo rigorous imprisonment for life with a fine of 5,000/-. In default of payment of fine, the accused/appellant has further been directed to suffer simple imprisonment for three months.

3. The informant (P.W. 2) is the younger brother of the victim. It is stated in his *fardebayan* that his widowed sister (name is not stated as per the direction by the Hon'ble Supreme Court), aged about 70 years, used to stay in a hutment at *Daliyaghat*. The said hutment was a thatched house and the victim used to stay alone in the said hutment. On the other side of the river, flown between the said hutment and the house of the informant, the informant used to stay with his family.

4. It is alleged that on 09th of June, 2015 at dead



hours of night, at about 02:00 A.M., the accused/appellant surreptitiously entered into the room of the said hutment and committed anal sex with the said old lady (the victim). The informant came to know about the incident from his family members, whereafter, he went to the hutment of the victim, the old lady, who, somehow or the other, stated the incident to him, alleging Jitan Chaudhary @ Jiten Choudhri (the appellant) as the perpetrator of the offence. The *fardbeyan* also states that the accused/appellant had old history of committing rape of other ladies.

5. On the basis of the above complaint, the police registered a case *vide* Purnea (Sadar) P.S. Case No. 212 of 2015 on 11th of June, 2015 under Section 376 of the I.P.C.

6. On completion of the investigation, the *charge-sheet* was submitted against the accused/appellant, alleging commission of the offence under Section 376 of I.P.C.

7. Since the case was exclusively triable by the Court of *Sessions*, the learned Chief Judicial Magistrate, Purnea committed the case to the Court of learned Principal Sessions Judge, Purnea for trial. Subsequently, the case was transferred to the Court of the learned Sessions Judge, Purnea for trial and disposal.



8. The learned Sessions Judge, Purnea framed charge against the accused/appellant under Section 376 of the I.P.C. and, alternatively, under Section 377 of the I.P.C. also.

9. During the course of trial, the prosecution has examined altogether seven witnesses. Amongst them, one P.W.1/Marali Kumari @ Sulochana Kumari is the daughter of the informant and the wife of one Jitendra Parihar; P.W. 2/Bindu Chaudhary is the younger brother of the victim; P.W. 3/Mishra Chaudhary is also another brother of the victim; P.W. 4/Rambha Devi is the wife of Ashok Chaudhary; P.W. 5 is the victim herself and P.W. 6 is the Doctor, namely, Dr. Poonam Prabha, who medically examined the victim on 12th of June, 2015, initially, submitted a medical report and, thereafter, on receipt of the radiological examination report and the biological report of vagina and anal swab of the victim, she (P.W. 6) submitted her final report. P.W. 7/Ram Vijay Sharma is the Investigating Officer of this case.

10. We shall now proceed to consider the evidence on record independently, without being swayed over the judgment and order passed by the learned Trial Court, to consider as to whether the Trial Court rightly convicted the accused/appellant and passed the order of sentence.



11. The learned Advocate appearing on behalf of the accused/appellant submits that all the witnesses, on the incident, are close relatives of the victim and there is no eye-witness to the occurrence.

12. The aforesaid submission is out-rightly discarded because seeking for an eye-witness in a case of rape adds to the woe of the victim with great extent. It does not happen that an accused would commit rape of a woman in presence of the eye-witnesses.

13. From the evidence on record, we find that P.W. 1/ Marali Kumari @ Sulochana Kumari used to go to the hutment regularly in the morning, taking tea for the old lady (the victim) by crossing the river. On the following date of the occurrence in the morning, when she went to the hutment, the victim told her crying that the appellant committed rape upon her during the last night. Hearing such incident, she returned back to her house and informed the same to her mother.

14. The defence took a plea that the father of one of the witnesses mortgaged a piece of land against some amount of money in favour of the accused. Subsequently, he was demanding the land before expiry of the period of mortgage, which was initially for three years. When the



accused refused to return the same, he introduced a false case against the appellant to put pressure upon him for the said land. The witness denied such suggestion. Subsequently, it is found from the evidence of P.W. 2 (the informant) that already the period of mortgage was coming to an end within a few months before the date of occurrence. Therefore, there was no reason of putting any pressure upon the appellant by instituting a false case.

15. We are in agreement with the learned defence counsel that in the instant case, all the witnesses, upon the occurrence, are family members. However, in a case of rape, the family members of the victim are the most natural witnesses and it is not possible to bring so-called independent witnesses outside the family of the victim to prove the charge under Section 376 or Section 377 of the I.P.C.

16. From the evidence of P.W. 3 & P.W. 4, we find that they came to know about the incident from P.W. 1 and her mother, whereafter, they went to the hutment where the victim (the old lady) used to stay. The victim corroborated the incident to them, which took place on 09th of June, 2015.

17. It is alleged by the learned Advocate appearing on behalf of the appellant that the incident took place



in the night of 09th June, 2015, but the F.I.R. was lodged after a lapse of two days on 11th of June, 2015. The victim was medically examined after three days of the occurrence, *i.e.*, on 12th of June, 2015. There was no explanation for such delay by the prosecution in the instant case.

18. In cases of offences other than sexual atrocities, an unexplained delay in lodging the F.I.R. may, in certain circumstances, be held to be fatal, but in a case of rape, it is consistently held by the Hon'ble Supreme Court that the delay in lodging the F.I.R. is not fatal for the prosecution. The victim (the old lady) and her family must gain some moral courage and strength to disclose the incident regarding ravishment of a lady to the Police Station by making the incident public.

19. It is found from the formal F.I.R. that the brother of the victim (P.W. 2) lodged the complaint on 11th of June, 2015. On the same date, the Purnea Sadar (Muffasil) P.S. Case No. 212 of 2015 was registered against the accused/appellant and the case was taken up for investigation.

20. In a case of rape, the most vital evidence is that of the victim and that of the doctor's. During trial, the victim was examined as P.W. 5. She stated her age to be 85



years. In paragraph 3 of her evidence, she stated that during day time, she was able to see by her one eye, but suffering from blindness by another eye. During night, she could see by her one eye. Her eye sight was good and she could see objects from quite some distance. Due to her old age, as she stated in her evidence, her brothers did not allow her to perform any work and she used to stay in her room. In cross examination, it was affirmatively taken that the day when the accused/appellant committed “*galat kaam*”, she was staying in her hut. She denied the suggestion that due to land dispute, she implicated the accused/appellant under the instruction of her brother.

21. The Medical Officer (P.W. 6) examined the victim on 12th of June, 2015. No spermatozoa, after microbiological examination, was found in the vagina and anal swab taken by P.W. 6, during her initial medical examination. However, the Medical Officer found abrasion on the nose of the victim and around anal orifice. Therefore, P.W. 6 submitted a report stating, *inter alia*, that she did not find any sign of rape at the time of the medical examination of the victim, but its possibility would not be excluded.

22. During cross examination, no suggestion was



put on behalf of the accused/appellant to the victim that she was suffering any form of disease, causing abrasion in anal orifice. The mark of abrasion was found even after three days of the occurrence. From the cross-examination of the witnesses examined on behalf of the prosecution, no substantial material appears where we can raise doubt on the evidence of the victim and other witnesses with respect to the incident.

23. Now, it appears from the Trial Court judgment that the appellant was convicted for the offence punishable under Section 377 of the I.P.C. The learned Trial Judge failed to consider the definition of Section 375 of the I.P.C., which was substituted by Act of 2013, with effect from 3rd of February, 2013.

24. Section 375 of the I.P.C., after amendment, defines rape in the following words :-

“A man is said to commit “rape” if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or.....”

(emphasis supplied)

25. Therefore, anal penetration comes within the fold of the definition of rape under Section 376 of I.P.C.

26. Section 376 of the I.P.C. speaks of



“punishment for rape”. Sub-Section (1) of Section 376 of the I.P.C. states as hereunder:-

“Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either for discription 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.”

27. With regard to the quantum of sentence, it is submitted by the learned Advocate appearing on behalf of the appellant that he was a young man of 25 years on the date of commission of the offence. It has been submitted on behalf of the appellant that he is in custody since 17th of June, 2015 and since then, more than ten years have elapsed. Therefore, he invites the Court to take a lenient view on the question of sentence as imposed by the learned Trial Court.

28. We have duly considered the submissions made on behalf of the appellant. Though, it is stated that the accused/appellant was a man of immoral character, but the said fact has not been proved during course of trial. So far as this case is concerned, it is the first offence of the accused/appellant, who, the time of commission of offence, was aged about 25 years and, now, he is aged about 35 years. During the passage of more than ten years in jail, we hope and



trust that the appellant has changed his moral degradation and becomes a responsible citizen of this country.

29. Considering such circumstances, we are of the considered view that in the instant case though the accused/appellant is convicted under Section 377 of the I.P.C., but so far as the punishment is concerned, we are of the view that we impose minimum punishment provided under Section 376 of the I.P.C.

30. Thus, the appellant is sentenced to suffer rigorous imprisonment for ten years with a fine of Rs. 5,000/-, in default of payment of fine, he has to suffer simple imprisonment for three months.

31. If the fine amount is paid, the entire amount be paid to the victim (P.W. 5) as compensation.

32. If the appellant, above-named, is in custody for more than ten years, the Office is directed to examine the same and issue release order, subject to payment of fine, if he is not wanted in any other case.

33. In view of the above, the judgment of conviction and the order of sentence, referred to above, are modified to the extent as noted hereinabove and are, hereby, set aside.



34. The appeal stands partly allowed.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

Saurabh.kr/Praveen-II

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.07.2026
Transmission Date	07.07.2026

