

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.744 of 2013

Arising Out of PS. Case No.-138 Year-2012 Thana- OBRA District- Aurangabad

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Pawan Paswan S/O Ra, Pravesh Paswan Resident Of Village- Tejpura, P.S.-
Obra, District- Aurangabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Aman Vishal, Advocate Ms. Leelawati Kumari, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, App

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 09-07-2026

Heard Mr. Aman Vishal, learned counsel appearing on
behalf of the appellant and Mr. Abhay Kumar, learned APP for
the State.

2. The present appeal has been filed under Section
374 (2) and 389(1) of Code of Criminal Procedure, challenging
the judgment of conviction and order of sentence dated
31.08.2013 and 02.09.2013 passed by the learned Adhoc. Addl.
Sessions Judge IV, Aurangabad in Sessions Case No. 80 of
2013/ 19 of 2013 (arising out of Obra P.S. Case No. 138 of 2012
corresponding to G.R. Case No. 744 of 2012), whereby and
whereunder, the appellant/accused has been convicted for the
offence punishable under Section 376 and 511 of the Indian
Penal Code and has been sentenced to undergo Rigorous



Imprisonment for the period of four years along with a fine of Rs.3,000/- and in default payment of fine to further undergo three months Simple Imprisonment.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present Appeal before this Court, assailing the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

BRIEF FACTS OF THE CASE

4. The prosecution case, in brief, is that on the intervening night of 20/21.09.2012 at about midnight, while she was sleeping in her house, the accused Pawan Paswan allegedly entered her house, pressed her mouth, pulled her down and attempted to commit rape upon her. During the scuffle, her clothes were torn. The informant raised alarm, whereupon the accused fled away from the place of occurrence leaving behind his torch and vest/T-shirt. It was further alleged that the accused was in an intoxicated condition and was habituated to using abusive language after consuming liquor.



5. On the basis of the written report, Obra P.S. Case No. 138 of 2012 dated 21.09.2012 was instituted. After investigation, charge-sheet was submitted against the accused under Section 376/511 IPC. The case was committed to the Court of Sessions where charge was framed and trial of the appellant concluded into his conviction.

ARGUMENT ON BEHALF OF THE APPELLANT

6. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence passed by the learned Trial Court are unsustainable in law as well as on facts. It was contended that the prosecution has failed to prove the charges beyond reasonable doubt and that the conviction has been recorded on the basis of conjectures and assumptions rather than reliable evidence. Learned counsel submitted that P.W.1, P.W.2, P.W.3 and P.W.4 are merely hearsay witnesses and none of them had witnessed the alleged occurrence. Further case of the defence is that the husband of the informant, who was the most material witness and was present in the house at the relevant time, was neither examined nor produced by the prosecution, thereby, adversely affecting the credibility of the prosecution case.



7. Learned counsel further submitted that the testimony of the informant (P.W.5) itself creates serious doubt regarding the prosecution story, as she admitted in her cross-examination that the appellant had not outraged her modesty. Learned counsel contended that there is no medical or independent evidence corroborating the allegation of attempt to commit rape and the prosecution witnesses have not consistently supported the case. The further case of the defence is that the prosecution has miserably failed to establish the guilt of the appellant beyond all reasonable doubts. Accordingly, seeking interference of this Court with the impugned judgment of conviction and order of sentence by setting aside and acquit the appellant from all the charges levelled against him.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, 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 has rightly convicted the appellants as the offences alleged against the appellant 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 31.08.2013 and order of sentence dated 02.09.2013 for the offences under Section 376 and 511 of the IPC.

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

- i. P.W.1 Jitendra Ram
- ii. P.W.2 Kameshwar Prajapati
- iii. P.W.3 Jai Prakash Paswan
- iv. P.W.4 Kamendra Yadav
- v. P.W.5 Bhagawaniya Devi
- vi. P.W.6 Devendra Kumar Mishra
- vii. P.W.7 Formal witness

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

- I. Ext.-1 Signature of P.W.1 on seizure list
- II. Ext.-1/A Signature of P.W.2 on seizure list



III. Ext.-1/B Seizure list

IV. Ext.-2 Formal FIR

V. Ext.-3 Forwarding endorsement of Sarpanch

Rina Devi on written report

14. On the basis of materials surfaced during the trial, the appellant/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. The provisions of Sections 375, 376 and 511 of the IPC are reproduced hereinafter as follows : -

“Section-375. Rape.—

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

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven 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, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Section-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.



Section 511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section."

16. 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

17. From the perusal of records, the statements of the prosecution witnesses are as under:

P.W.1 – Jitendra Ram has deposed that on the night of



occurrence he was sleeping in his house. On the following morning he heard that an unknown person had entered the house of Bhagawaniya Devi during the night and that a torch and T-shirt had been recovered from the place of occurrence. He further heard that the accused Pawan Paswan had entered the house of the informant and attempted to commit rape upon her. He proved his signature on the seizure list (Ext.-1) and identified the accused in Court.

In cross-examination, he admitted that he had not witnessed the occurrence and had only heard about it from others. He further stated that although he identified the T-shirt, he could not identify the torch and was unable to state the colour of the T-shirt.

P.W.2 – Kameshwar Prajapati has deposed that after hearing hullah at midnight he went to the house of Bhagawaniya Devi where he heard that Pawan Paswan had caught hold of her hand and pressed her mouth. He claimed that he saw the torch and T-shirt left at the place of occurrence. He further stated that on the following morning the accused was attempting to snatch the T-shirt. He proved his signature on the seizure list (Ext.-1/A).

In cross-examination, he admitted that he had not seen



the occurrence and had not seen the accused at the place of occurrence. He further stated that many persons wear similar T-shirts and that the seizure list was not prepared in his presence.

P.W.3 – Jai Prakash Paswan has deposed that after hearing alarm at midnight he went to the house of Bhagawaniya Devi and found that a torch and T-shirt had been left there. He stated that the accused had attempted to outrage the modesty of Bhagawaniya Devi and had fled away after she raised alarm.

In cross-examination, he admitted that he reached the place of occurrence about half an hour after the incident and had not seen the occurrence with his own eyes

P.W.4 – Kamendra Yadav has stated that after hearing noise on the night of occurrence he went to the house of Dharmdeo Prajapati where Bhudeo Prajapati informed him that a person had pressed the mouth of Bhagawaniya Devi and had fled away after she raised alarm. He stated that he remained at the door and did not enter the house.

In cross-examination, he admitted that he had neither witnessed the occurrence nor seen the articles allegedly left at the place of occurrence

P.W.5 – Bhagawaniya Devi (Informant/Victim) has



stated that she had instituted the case against Pawan Paswan. According to her, on the night of occurrence the accused entered her house, pressed her mouth and pushed her down. Upon her raising alarm, the accused fled away leaving behind his vest and torch. She stated that she subsequently lodged the case and identified the accused in Court.

In cross-examination, she stated that the night was dark and that there was a bamboo screen (tati) at the entrance of her house which was not locked. She further stated that her husband was sleeping beside her at the time of occurrence. Significantly, she stated that the accused had not outraged her modesty. She also stated that the accused had a torch in his hand and a vest on his shoulder.

P.W.6 – Devendra Kumar Mishra (Investigating Officer) has stated that on 21.09.2012, while posted as Assistant Sub-Inspector at Obra Police Station, he was entrusted with the investigation of the case. During investigation, he recorded the statements of the informant and other witnesses, inspected the place of occurrence, arrested the accused and prepared the seizure list. He stated that after completion of investigation and on receipt of supervision reports, he submitted charge-sheet under Section 376/511 IPC against the accused. He proved the



seizure list (Ext.-1/B) and the formal FIR (Ext.-2).

In cross-examination, he stated that the distance between the police station and the place of occurrence was about 20 kilometres and that he recorded the statements of witnesses individually.

P.W.7 – Formal Witness has proved the forwarding endorsement of Sarpanch Rina Devi on the written report, which was marked as Ext.-3.

18. On careful perusal of the materials available on record, it appears that the prosecution case mainly rests upon the testimony of the prosecutrix P.W.5. I proceed to analyse whether case under Section 376 is made out.

19. It is well settled principle of law that conviction can be based upon the sole testimony of the prosecutrix provided that such testimony is trustworthy, reliable and inspires confidence. The Apex Court in case of ***Krishan Kumar Malik v. State of Haryana***, reported in ***(2011) 7 SCC 130***, 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. Based on a careful examination of the evidence adduced by the prosecution, it is evident that none of the



witnesses, except the informant-victim (P.W.5), claimed to have witnessed the actual occurrence. P.W.1, P.W.2, P.W.3 and P.W.4 are admittedly hearsay witnesses who reached the place of occurrence only after hearing alarm and derived their knowledge of the incident from what was narrated to them by others. Their testimony, therefore, does not constitute direct evidence regarding the alleged attempt to commit rape. At best, these witnesses corroborate the fact that some commotion had occurred and that a torch and a vest/T-shirt were allegedly found at the place of occurrence.

23. The prosecution case thus rests substantially upon the sole testimony of the victim-informant, Bhagawaniya Devi (P.W.5). In her examination-in-chief, she has stated that the accused entered her house at midnight, pressed her mouth, threw her down and fled away after she raised alarm, leaving behind his vest and torch. However, significantly, she did not specifically depose that the accused attempted to commit or performed any overt act towards the commission of rape. More importantly, in paragraph 8 of her cross-examination, she had categorically admitted that the accused had not outraged her modesty. This admission assumes considerable significance as it directly impacts the prosecution allegation of an attempt to



commit rape under Section 376 of IPC.

24. 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.

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 prosecution has not examined the informant's husband, who was admittedly sleeping beside her at the relevant time. Being a natural and material witness to the occurrence, his non-examination remains



unexplained and gives rise to an adverse inference against the prosecution case. Furthermore, no medical evidence was adduced to support the allegation, nor was any independent witness examined to establish any overt act on the part of the accused amounting to an attempt to commit rape.

26. The record reveals that the Medical Officer was not examined during the course of trial. Undoubtedly, the Medical Officer is required to prove the medical evidence relating to the nature and cause of injuries. Its examination also affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination. However, it is well settled that the mere non-examination of the Medical Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused; and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in **(2013) 3 SCC 791**, which is reproduced



hereinafter:

“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law.”

27. In the case of ***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.

28. 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 that there is no medical examination to support the allegation against the appellant to corroborate with the versions of the prosecutrix.

Whether in absence of TIP of the recovered articles, the allegation under Sections 376/511 is vitiated?

29. The Apex Court in case of *Thammaraya vs State of Karnataka* reported in *2025 INSC 108*, has categorically observed that the prosecution's failure to conduct a Test Identification Parade (TIP) of the recovered articles constituted a significant gap in its case. Since the material objects were identified for the first time during the trial, their identification became doubtful, thereby affecting the credibility of the prosecution's evidence. The Apex Court described this omission as a clear instance of negligence and dereliction of duty on the part of both the Investigating Agency and the Public Prosecutor. The observation of the Apex Court is reproduced hereinafter:

"22. Furthermore, another very crucial missing link in the prosecution case that it failed to conduct the Test Identification Parade(TIP) of the recovered



articles, thereby, bringing the identification of the material objects in Court for the first time, is under a cloud of doubt. It is a case of sheer negligence and dereliction of duty on the part of the Investigating Agency and the Public Prosecutor for not conducting Test Identification Parade(TIP). This Court shed light on the purpose of Test Identification Parade(TIP) in Ramkishan Mithanlal Sharma v. State of Bombay, wherein it held as follows:

“20. ... These parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. ...the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence.” (emphasis supplied)

23. This Court has further noted the significance of Test Identification Parade(TIP) in Munna Kumar Upadhyay alias 15 (1954) 2 SCC 516 Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh 16, wherein it was held:

“66. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature.”

*.....
(emphasis supplied)*

24. Therefore, this material omission on part of the Investigating Officer(PW-27) in not conducting a Test Identification Parade(TIP) of the recovered articles, more particularly when the case of prosecution is based solely upon recoveries of these articles, has created holes in the fabric of the prosecution story, which are impossible to mend.”

30. Further, the evidence regarding the recovery of



the torch and vest/T-shirt is of limited evidentiary value in absence of TIP. The seizure witnesses admitted that they had not witnessed the occurrence, and the alleged articles were not shown to have been scientifically connected with the accused. Mere recovery of such articles, in the absence of reliable evidence regarding the commission of the offence, cannot by itself establish the charge under Section 376/511 of IPC.

31. The evidence may suggest that the accused had entered the house of the informant during the night and that some altercation or scuffle had taken place, the prosecution evidence falls short of proving beyond reasonable doubt that the accused had taken any definite or proximate step towards the commission of rape. The inconsistencies in the testimony of the victim, the absence of direct eyewitnesses, the non-examination of the most material witness, namely the husband of the informant, and the lack of corroborative evidence create substantial doubt regarding the prosecution version. I am of the view that the prosecution has failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt and the conviction of the appellant cannot be sustained.

32. The impugned judgment of conviction and



order of sentence dated 31.08.2013 and 02.09.2013 respectively passed by the learned Adhoc. Addl. Sessions Judge IV, Aurangabad in Sessions Case No. 80 of 2013/ 19 of 2013 (arising out of Obra P.S. Case No. 138 of 2012 corresponding to G.R. Case No. 744 of 2012), is hereby quashed and set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, he is discharged from the liability of his bail bond. The fine deposited by the appellant, if any, shall be refunded to him.

33. Accordingly, the present appeal is allowed.

34. 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)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	23.06.2026
Uploading Date	09.07.2026
Transmission Date	09.07.2026

