

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.472 of 2013**

Arising Out of PS. Case No.-13 Year-2011 Thana- BATH District- Bhagalpur

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Pintu Paswan @ Pramod Paswan S/o Late Maheshwar Paswan Resident of
English Ratanpur, P.S.- Bath, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Prakash Dwivedi, Advocate.
Mr. Saurabh Raj, Advocate.

For the State : Mr. S.N.Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 18-06-2026

Heard Mr. Ravi Prakash Dwivedi, learned counsel
along with Mr. Saurabh Raj, learned counsel appearing on
behalf of the appellant and Mr. S. N. Prasad, learned APP for the
State.

2. The appellant has preferred the present appeal
under Sections 374(2) and 389(1) of the Code of Criminal
Procedure challenging the judgment of conviction dated
14.05.2013 and order of sentence dated 20.05.2013 passed by
the learned Ad hoc Additional District and Sessions Judge-III,
Bhagalpur in Sessions Trial No. 1276 of 2011, Trial No. 59 of
2011, arising out of Bath P.S. Case No. 13 of 2011, whereby



and whereunder, the appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 2000/- and in default of payment of fine, to undergo simple imprisonment for three months.

BRIEF FACTS OF THE CASE

3. The prosecution case, as per the F.I.R., is that on 29.03.2011 at about 7:30 A.M., while the informant, Anita Kumari, was washing utensils, the appellant, Pintu Paswan, allegedly came and called her, and when she enquired as to why she had been called, he took her inside a room and forcibly committed rape upon her when no other person was present in the house; thereafter, when her mother returned from the field, the informant narrated the entire occurrence to her, leading to the institution of the case. The charge sheet was submitted leading to trial and the appellant has finally be convicted under Section 376 IPC.

ARGUMENT ON BEHALF OF APPELLANT

4. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence are contrary to law, based on erroneous appreciation of facts and evidence on record, and are therefore



liable to be set aside. Learned counsel submitted that the prosecution has failed to establish the genesis, manner and time of occurrence beyond reasonable doubt and that the evidence adduced suffers from material contradictions and inconsistencies. Referring to the testimony of the victim (P.W.1), learned counsel submitted that she had stated that the appellant caught hold of her hands and legs and did “nautanki”, which itself explain as merely catching hold of her limbs will not amount to rape. Learned counsel submitted that in absence of the essential ingredients of the offence under Section 376 of the Indian Penal Code is not established. Learned counsel further submitted that the victim was medically examined on the following day of the alleged occurrence and the doctor found neither any internal nor external injury nor any sign of recent sexual intercourse. According to the appellant, the testimony of the victim was full of contradictions and exaggerations and was not corroborated by the medical evidence. He further submitted that the medical evidence and that the forensic evidence relating to the victim’s clothes do not inspire confidence in view of the prosecution case. Learned counsel next submitted that the appellant had consistently taken the defence, including his statement under Section 313 of the Code of Criminal Procedure,



that he had been falsely been implicated due to political rivalry with one Bipin Singh. He informs that the appellant, belongs to the Scheduled Caste and was a popular candidate in a Panchayat constituency reserved for Scheduled Castes and had strong prospects of success in the election and to restrain him from participating in the election on the basis of false acquisition has implicated. He emphatically submitted that the trial court failed to properly consider the defence case and the circumstances brought on record by the appellant. On the point of sentence learned counsel submitted that the sentence imposed is harsh and disproportionate and that the appellant, being the sole earning member of his family, will cause immense hardship to his dependents due to his incarceration. On these grounds, as well as, on the ground available that no case of alleged rape has been proved the record and evidence is taken, therefore, the impugned judgment of conviction and order of sentence are liable to be set aside.

5. On the point of sentence, learned counsel appearing on behalf of the appellant had submitted that the appellant has four children to be taken care of and there is no previous conviction against him. Prayer has been made that the sentence awarded to the appellant be reduced to a lesser period.



ARGUMENT ON BEHALF OF THE STATE

6. *Per Contra*, learned APP appearing on behalf of the State while opposing the appeal submitted that the learned District court, after considering all the evidences, both oral and documentary, adduced during the course of trial, has committed no error, either of fact or of law, in recording the conviction of the appellant on the basis of cogent and reliable material on record, warranting no interference by this Court.

7. Learned A.P.P. further submitted that the offence punishable under Section 376 of the Indian Penal Code is of a serious nature and, having taken the law into his own hands, the appellant deserves no leniency. It is further submitted that the sentence of seven years rigorous imprisonment awarded to the appellant may even be enhanced to ten years.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. 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.

10. The appellant has been convicted under Section 376 of the Indian Penal Code for committing rape upon the victim who was aged about 17 years. The alleged incidence took



place on 29.03.2011 at 07 A.M. and the F.I.R. was lodged on 30.03.2011 and the victim was examined by the doctor on 30.03.2011. As per the opinion of the doctor, the medical evidence does not conclusively support the allegation of rape. **In such circumstances, whether the sole testimony of the prosecutrix (victim) can be said to be trustworthy and reliable and is sufficient to sustain conviction?**

11. During the trial, the prosecution has examined altogether eight witnesses, namely:

- 1) PW-1 Anita Kumari (Victim)
- 2) PW-2 Maya Devi (mother of the victim)
- 3) PW-3 Birbal Mandal (brother of the victim)
- 4) PW-4 Bhairav Singh (father of the victim)
- 5) PW-5 Rita Devi, Independent witness
- 6) PW-6 Upendra Singh, uncle of the victim
- 7) PW-7 Dr. Anupama Sahay, doctor
- 8) PW-8 Anil Kumar Singh, I.O.

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

- (i) Exhibit- 1- Medical Report
- (ii) Exhibit-2- Written Application.
- (iii) Exhibit -3, Formal F.I.R.
- (iv) Exhibit -4 – Seizure List.
- (v) Exhibit-5 – F.S.L. Report.

13. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of



the CrPC by putting incriminating circumstances/evidences surfaced against him, which he denied and showed his complete innocence.

14. Before I proceed to analyze the evidences in support of the allegation both oral i.e. direct evidence what the witnesses personally said, heard or perceived and the documentary evidences, both primary and secondary evidences which needs consideration to decide the appeal, I find it gainful to reproduce the provisions of Sections 375 and 376 of the Indian Penal Code, which are as under:-

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."

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]*

15. The Hon'ble Supreme Court, in the case of
Deepak Kumar Sahu Vs. State of Chhattisgarh, reported in



2025 INSC 929, has held that medical evidence is essentially corroborative in nature and that where the ocular testimony of the prosecutrix is found to be reliable and trustworthy, the absence of medical evidence is not fatal to the prosecution case. Consequently, conviction can be sustained on the sole testimony of the prosecutrix, provided it inspires confidence and is of sterling quality, which is reproduced hereinafter:

“5.5 In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail. In State of Punjab vs. Gurmit Singh [(1996) 2 SCC 384] it was observed:

In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case. (Para 16)”

16. The victim has been examined as P.W.-1 and she has categorically deposed that while she was washing utensils, the appellant forcibly caught hold of her hand and dragged her into a room, where he committed rape upon her. The testimony of P.W.-1 (the victim) finds corroboration from



the F.S.L. report. Two samples, namely, the *salwar* and *janghiya*, marked as Exhibit 'A' and 'C', were sent to the Forensic Science Laboratory for examination. The Serological and Biological examination revealed that the blood stains and semen-mixed blood stains detected on Exhibits 'A' and 'C' were of human origin, thereby lending assurance to the ocular version of the victim.

17. The Assistant Director, Forensic Science Laboratory, Government of Bihar, Patna reported its result of examination as under:

- 1. Blood has been detected over large areas in each of the exhibit marked 'A' and 'C'.*
- 2. Semen mixed with blood has been detected in each of the exhibit marked 'A' and 'C'*
- 3. Serological report on origin and group of blood and semen would follow.*

18. I find that the F.S.L. report is a scientific report, having substantial evidentiary value, reveals the presence of semen-mixed blood stains on the *salwar* and *janghiya* of the victim, which were sent for forensic examination. The said scientific evidence, coupled with the testimony of the victim, is sufficient to sustain the conviction of the appellant under Section 376 of the Indian Penal Code in view of the law laid



down by the Apex Court in case of ***Deepak Kumar Sahu*** (*supra*). I do not find any infirmity, illegality or perversity in the judgment of conviction and the order of sentence passed by the learned trial court warranting interference by this Court.

19. Having considered the rival submissions on the point of sentence, this Court finds that there is no previous conviction against the appellant. Taking into consideration the age of the appellant, his family circumstances, and the fact that he has remained in custody for about three and a half years during the pendency of the appeal and was, thereafter, released on bail on 18.03.2015, this Court is of the considered view that the ends of justice would be adequately met by modifying the sentence. Accordingly, while maintaining the conviction, it is directed that the appellant be taken into custody forthwith and undergo imprisonment for a further period of one and half years, (five years), after giving due consideration of the period already undergone during investigation, trial and pendency of the appeal, in accordance with law.

20. Accordingly, the present appeal stands disposed of.

21. 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)

mantreshwar/-

AFR/NAFR	
CAV DATE	N.A.
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