

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.312 of 2014**

Arising Out of PS. Case No.-29 Year-2012 Thana- SANOKHAR District- Bhagalpur

Shankar Harijan, son of Late Sakuni Harijan, resident of village - Choti Naki,  
Police Station - Sonakhar, District - Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                     |   |                                                                                                      |
|---------------------|---|------------------------------------------------------------------------------------------------------|
| For the Appellant/s | : | Dr. Manoj Kumar, Adv.<br>Ms. Sweety Sinha, Adv.<br>Mr. Kshem Sharma, Adv.<br>Ms. Kshboo Kumari, Adv. |
| For the State       | : | Mr. Bipin Kumar, APP                                                                                 |

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL JUDGMENT**

**Date : 19-02-2026**

1. The instant appeal has been preferred against the judgement of conviction dated 22.05.2014 and order of sentence dated 27.05.2014 passed by the court of learned Adhoc Additional District & Sessions Judge-I, Bhagalpur, in Sessions Trial No. 1245 of 2012/Tr. No. 09 of 2013 (arising out of Sanokhar P. S. Case No. 29 of 2012), whereby and whereunder the appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code (in short, "IPC"). The appellant has been sentenced to undergo rigorous imprisonment for 10 (ten) years with a fine of Rs. 5000/- (Rupees Five Thousand) and in default of payment of the fine,



he has been directed to undergo rigorous imprisonment for six months separately.

**Prosecution Story:**

2. The prosecution case, in brief, is that the informant, XXX, presented a written application before the Officer-in-Charge of Sanokhar police station stating therein that her husband, who is a handicapped person, had gone to Aligarh to work as a labourer. On 04.05.2012 at about 3 P.M., she went towards the Maina River to gather cow dung for fuel (Jalawan) and while doing so, Shankar Harijan (appellant) came from behind her, caught her arms, knocked her down on the ground, and committed an illegal act with her. She further alleged that on her alarm, her co-villagers, namely, Bishnu Harijan, Pagga Harijan, Chandan Harijan, and Chhotu Harijan, came there, and on seeing them, the appellant fled towards the village. Thereafter, she reached home and informed her gotnis, namely, Poonam Devi, Pinki Devi, and Sushila Devi, as well as her bhaishur, Upendra Harijan, about the incident. She further stated in her application that due to a Panchayati in the village, there was some delay in lodging the case at the police station.

3. The informant recorded his fardbeyan on 05.05.2012 at about 02:30 P.M. at Sanokhar Police Station and



detailed the above-mentioned incident. Upon that basis, the formal FIR bearing Sanokhar P.S. Case No. 29 of 2012 was registered for the offence punishable under Section 376 of the IPC, which set the criminal law in motion.

4. After completion of the investigation, the appellant was charge-sheeted for the offence punishable under section 376 of the IPC.

5. After cognizance of the alleged offence, the learned Judicial Magistrate 1<sup>st</sup> class, Bhagalpur, committed the case of the appellant to the court of Sessions Judge, Bhagalpur, for trial. The appellant Shankar Harijan stood charged for the offence under Section 376 of the IPC. The said charge was read over and explained in Hindi to the appellant by the trial court, to which he pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined altogether six witnesses who are as under :-

|      |                  |                                                  |
|------|------------------|--------------------------------------------------|
| PW-1 | Bishnu Harijan   | Co-villager of the victim (hostile witness)      |
| PW-2 | Chandan Das      | Co-villager of the victim (hostile witness)      |
| PW-3 | Raju Das         | Co-villager of the victim (hostile witness)      |
| PW-4 | XXX              | The informant (victim)                           |
| PW-5 | Basudeo Kumar    | The police officer who submitted the chargesheet |
| PW-6 | Dr. Anupma Sahay | The medical officer who examined the victim      |

7. In addition to the above mentioned ocular



evidence, the prosecution proved and exhibited the following documents in documentary evidence :-

|       |                                                                                               |
|-------|-----------------------------------------------------------------------------------------------|
| Ext-1 | The signature of the victim on the statement recorded under section 164 of Cr.P.C.            |
| Ext-2 | The signature of the victim on the written application                                        |
| Ext-3 | Medical examination report of the victim in the writing and signature of the medical officer. |

8. After the completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short, 'Cr.P.C.') by the trial court. The appellant denied the material circumstances appearing against him from the prosecution evidence and stated that he would produce the defence witnesses while recording his statement.

9. In defence, the appellant produced and examined altogether three witnesses as defence witness, who are as under :-

|      |                 |
|------|-----------------|
| DW-1 | Shankar Jha     |
| DW-2 | Jageshwar Das   |
| DW-3 | Prakash Harijan |

10. While convicting the appellant for the offence under Section 376 of the IPC, the learned trial court mainly placed reliance upon the testimony of the victim (PW-4).



**Submissions on behalf of the appellant :-**

**11.** Dr. Manoj Kumar, learned counsel for the appellant, submits that in the FIR the victim stated that on the alleged day and time, she went towards the Maina river to collect cow dung and at that time the accused/appellant came from behind and caught hold of her, pushed her down, and committed rape with her, however, before the trial court she deposed that the said occurrence took place near a graveyard. According to the victim, the prosecution witnesses PW-1 and PW-2 reached the place of occurrence upon hearing her cry and, upon seeing them, the accused/appellant fled away but the said story was not supported by PW-1 and PW-2 before the trial court, and they turned hostile.

**12.** Learned counsel further submits that as per prosecution the alleged occurrence took place on 04.05.2012, and it was deposed by the victim before the trial court that during the occurrence of sexual assault, she sustained some injuries on her body; however, no supporting injury was found by the medical expert, despite the victim being examined on 06.05.2012. Hence, there is no corroboration of the victim's allegation from the medical evidence.

**13.** Learned counsel further submits that there are



serious contradictions between the victim's statements recorded under Section 164 of Cr.P.C. before the Judicial Magistrate and the statements made by her before the trial court in her evidence. It is further submitted that the Investigating Officer, who conducted the major part of the investigation, was not produced by the prosecution before the trial court, which seriously prejudiced the appellant's defence. Lastly, it is submitted that, in fact, there was a land dispute between the appellant and the victim's family regarding the passage and a drain, which had been continuing since before the registration of the FIR and in this regard, sufficient evidence was adduced in defence by examining the independent witnesses.

**Submissions on behalf of the State :-**

**14.** On the other hand, Mr. Bipin Kumar, learned Additional Public Prosecutor for the State, submits that the victim fully supported her allegations before the trial court in her evidence, and a mere past strained relationship owing to the land dispute, as stated by the appellant's counsel, which mainly came to light in the defence evidence, cannot be a ground to completely discard the victim's allegation. The victim was overpowered by the appellant from behind; therefore, there was no possibility of her sustaining any injury from the sexual



assault of the appellant.

**Consideration and analysis :-**

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

**16.** As per the prosecution story narrated by the victim herself in her FIR, when the alleged occurrence of sexual assault was committed by the appellant upon her, her co-villagers, namely, Bishnu Harijan, Paggo Harijan, Chandan Harijan and Chhotu Harijan, rushed to the place of occurrence upon hearing her cry; upon seeing the said villagers, the accused/appellant fled towards the village. In respect of this part of the alleged incident, the evidence of the said co-villagers was very important; however, out of them, only two persons, namely Bishnu Harijan and Chandan Das, were produced and examined as PW-1 and PW-2 by the prosecution, and they turned hostile. Surprisingly, the Investigating Officer did not cite Paggo Harijan and Chhotu Harijan as prosecution witnesses in the chargesheet; moreover, the prosecution did not take any steps to produce and examine them with the help of the provisions of



Section 311 of the Cr.P.C., which goes against the prosecution. The victim further stated in her FIR that when the accused/appellant fled upon seeing her co-villagers, she returned home and informed her gotani, namely Poonam Devi, Pinki Devi, and Sushila Devi, and her bhaisur, Upendra Harijan, about the said incident. The prosecution failed to produce any of these relatives of the informant as prosecution witnesses, whose evidence was relevant to the prosecution story. In this regard, there is no explanation on the part of the prosecution, and even the Investigating Officer did not cite them as prosecution witnesses in the chargesheet.

17. The victim's statement was initially recorded under Section 164 of the Cr.P.C. on 08.05.2012 after the registration of the FIR, and her signature on the said statement has been marked as Exhibit-1. In the said statement, the victim stated that on the alleged day and time of the occurrence, she went outside to collect cow dung and did not see the appellant. She later stated that the appellant firstly forcefully pulled her, then pushed her down, and started doing wrong with her; she then cried and upon seeing people, the appellant left her and fled away. The victim remained silent regarding the names of her co-villagers in her statement. She further stated that the appellant



had been teasing her for the past 2–3 years and was pressurizing her to accompany him. However, before the trial court, no such allegation was levelled by the victim in her evidence.

**18.** Now, I come to the victim's court evidence. She was examined as PW-4. Though in her examination-in-chief, she supported the story described in her FIR and also proved the FIR and her statement recorded under Section 164 of Cr.P.C., and also gave details of the names of her co-villagers who arrived at the place of occurrence upon hearing her cry, as discussed above, but none of them except two were produced, and those examined co-villagers turned hostile. In her cross-examination, the victim stated that 2 to 3 years prior to the alleged occurrence, a quarrel had taken place between her and the appellant. Regarding that incident, a panchayati meeting was also held in which the panches delivered their decision, and the appellant was let off; however, the dispute between them continued. From these statements, it is evident that there were strained relations between the appellant and the victim at the time of the alleged occurrence; therefore, in such a situation, there must be some corroborative evidence to support the allegations of the victim, as she does not appear to be a sterling witness in the present matter. The victim further deposed in her



cross-examination that she went to the doctor after sustaining bodily injuries and showed the same to the doctor; however, this fact is not corroborated by the victim's medical examination report (Exhibit-3). In this regard, the evidence of PW-6 (the doctor) is also important, who found no injury on the external or internal parts of the victim's body and opined that no evidence of recent sexual intercourse was found. Thus, the allegation made by the victim is not corroborated by the medical evidence, particularly in view of her own statement that she sustained injuries during the alleged occurrence. It is also important to mention that in paragraph 5 of her cross-examination, the victim deposed that a quarrel took place between her and the appellant and that she lodged the case the very next day. This statement suggests mala fide intention on the part of the victim in lodging the case.

**19.** In the present matter, the prosecution did not examine the Assistant Sub-Inspector of Police, Jeevan Kishore Nayak, who conducted the major part of the investigation. It was deposed by PW-4 (the victim) that the clothes worn by her at the time of the incident were given to the police. However, the victim's clothes were not produced before the trial court, and to explain the reason for their non-production, the evidence of



the Investigating Officer was very important; the same remained unexplained due to his non-examination.

**20.** As far as the appellant's defence regarding a land dispute between the appellant and the victim, which had been continuing since before the alleged occurrence as stated is concerned, the evidence given by the defence witnesses (DW-1, DW-2, and DW-3) is relevant, and all the said witnesses remained consistent in supporting the appellant's defence.

**Conclusion :-**

**21.** In view of the aforesaid facts and circumstances emerging from the prosecution evidences, as discussed above, the victim does not appear to be a sterling witness mainly in light of her past enmity with the appellant running since prior to the registration of the FIR, further due to non-corroboration of her allegation by medical evidence despite her statement that she sustained injuries during sexual assault and owing to non-examination of material witnesses named in the FIR, this Court is not persuaded to affirm the conviction of the appellant for the offence punishable under Section 376 of the IPC, and the learned trial court committed an error in appreciating the evidence of the victim while holding the appellant guilty. Accordingly, the impugned judgment dated 22.05.2014



convicting the appellant under Section 376 of the IPC and the order dated 27.05.2014 sentencing him for the said offence are hereby set aside. The appeal stands allowed.

22. The appellant is on bail; accordingly, he and his sureties are discharged from the liabilities of their respective bail bonds.

23. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for needful and necessary compliance.

(Shailendra Singh, J)

Annu/BKS-

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