

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.18 of 2014**

Arising Out of PS. Case No.-2 Year-2012 Thana- SHEIKHOPUR SARAI District-
Sheikhpura

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Raj Kumar @ Seni Mahto Son Of Sh. Saheb Mahto Residnet Of Village -
Panchi,P.S-Sheikhopur Sarai, District - Sheikhpura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajit Kumar, Advocate
	:	Mr. Dinkar Kumar, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 06-08-2025

Heard Mr. Ajit Kumar, learned counsel for the
appellant assisted by Mr. Dinkar Kumar and Mr. Anita Kumari
Singh, learned APP for the State.

2. This appeal has been filed under Section
374(2) of the Code of Criminal Procedure Code, 1973
(hereinafter refereed as 'Cr.P.C') against the judgment of
conviction and order of sentence dated 21.12.2013 respectively
passed by the learned Additional Sessions Judge, Sheikhpura in
Sessions Trial No. 468 of 2012 arising out of Shekhopursarai
P.S. Case 02 of 2012 / G.R No. 18 of 2012 whereby and where
under the appellant has been convicted for the offences
punishable under Sections 354, 341 and 323 of the Indian Penal
Code (hereinafter refereed as 'IPC') and sentencing him to



undergo simple imprisonment for two years for the offence punishable under Section 354 of the IPC, one month imprisonment for the offence punishable under Section 341 of the IPC and further six months for the offence punishable under Section 323 of the IPC and to pay fine of Rs. 2,000/- and in default of non-payment of fine he shall undergo simple imprisonment for one month. All the sentences shall run currently.

3. The case of prosecution in brief is that on 05.02.2012 at 7:45 pm when the informant Priti Kumari came out from her defecate room situated in her land then the accused caught her hand and after knocking her down opened his lungi and forcibly remover her salwar and tried to assault her sexually. She raised alarm then her grand father Chamari Ram and mother came there and he assaulted to her mother and grand father causing fracture injury on his hand and also used filthy language. Due to late hours she could not go to police station and on next day she lodged the present case.

4. On the basis of the above, case was registered and after completing the investigation, the investigating officer submitted charge sheet under aforesaid Sections. After taking cognizance the learned CJM committed the case to the Sessions



Court.

5. On behalf of the prosecution, altogether 8 witness were examined to substantiate the charges leveled against the accused/appellant Raj Kumar @ Seni Mahto. Out of them, PW-1 Chamari Ram (injured), PW-2 Babita Devi (injured), PW-3 Priti Kumari (informant), PW-4 Dr. Mohd. Vasim, PW-5 Prabhu Sao, PW-6 Basant Mahto (declared hostile), PW-7 Janardan Mandal (IO) and PW-8 Ganesh Singh (IO).

6. PW-1 in his examination-in-chief stated that Priti Kumari is her granddaughter and this incident happened nine months ago at 7:30 in the evening. When he was at home, his granddaughter went to defecate. Rajkumar caught his granddaughter and tried to rape her. When his granddaughter screamed, he reached there and started to scream, the accused broke his hand by hitting him with a stick. When he stopped the accused with his hand, it broke in defence. The injury is visible in the hand which is hanging below the elbow and is bent from its natural position. The accused hit and run away.

6.i. In his cross-examination, he stated that in the month of Magh, in the village, people have their dinner and go to sleep by 9-10 pm. He was at home and her daughter-in-law



was inside the house. The toilet is also built at his own land at a distance of 4 feet. When he reached there after hearing the commotion. Stick was in the hand of Rajkumar and hit him the moment he came there. He was saved by his daughter-in-law. His granddaughter also saved her. The accused hit him with a stick and on screaming, accused hit him twice again. He also went to the police station and called the police. The inspector came the same day. At 12:00, after the police verification was over, he was treated at the village hospital and was admitted there overnight. Around 2-3 o'clock in the night, a plaster was put on his hand and then he was sent home. It is not that no such incident happened or he used to buy goods from his shop and he was filing a case against him for not paying the money. He had not filed any case against the accused earlier.

7. PW-2 in her examination-in-chief stated that the occurrence took place 10 months ago at 07-7:30 PM, his daughter Priti Kumari had gone to washroom. At 7 o'clock, Rajkumar (Sunny Mahto) knocked down her daughter and tried to rape her. When the girl shouted, her grandfather ran and then she went and saw that her girl was being molested. When her grandfather shouted, the accused hit him with a stick and broke grandfather's hand and hit her also and ran away. He recognizes



the boy who has eloped. Her daughter filed a case at the police station. The copy of the case has the signature of her daughter and hers on it and she recognizes it as well.

7.i. In the cross-examination, she stated that she was at home and she was not well that day. Everyone was having their dinner. First of all, her father-in-law went after hearing the *hulla*, and then she went after him. When she went there, the accused hit her. The accused also hit the aged person. The aged person fell down and broke his arm. No one came to save the old man. When she reached there, the accused also hit her and ran away. He hit my daughter too and she also tried to save herself. When she went there, he beat her too and ran away. She was treated in the hospital where she was admitted for 3 days. Her mouth and her chin got injured.

7.ii. She further stated that her daughter was fallen there and the accused tried to rape her daughter. Her daughter was also treated in the hospital and the daughter too told the same. The accused immediately run away after beating them. She cannot tell the time. Some outsider also came just after the incident. The shop of the father of the accused is next to her house. She does not buy anything from that shop. It is not the fact that such an alleged occurrence did not happen and she



filed a false case on demand of money for the purchased item from the shop of appellant/accused.

8. PW-3 in her examination-in-chief stated that the occurrence took place on 5th January 2012 at 7.30 PM. She was going to the toilet which is next to her house. When she came out of the toilet, Rajkumar (Sunny Mahto) caught her and pushed her down. He started undressing his *lungi* and opened her *salwar* too and tried to do dirty act. She shouted and her Dada Ji (Chamari Ram) arrived. The accused broke Dada Ji's hand with a stick. He hit her too and when her mother came, he hit her mother also. He entered her house after that and threatened all of us that if anyone says anything about the occurrence, he will kill all of them. In the morning, she went to the police station and filled the case against the accused. She gave the written statement of the occurrence.

8.i. In her cross-examination, she stated that accused's shop is near her house. It is just a few steps away, and the toilet is built outside her house, in front of which a road passes. Sunny did not use to visit her house earlier. She too did not use to live there. She used to study at her grandmother's place. This is the first case against the accused, there was no case against him before it. When the accused came close to her



and caught her, she shouted, and after two-three minutes her Dada Ji came and then the accused left her and started hitting her grandfather. She tried to save him but the accused hit her too. Her mother came just after her grandfather.

8.ii. She further stated that the quarrel went on for 15 minutes and when the accused started to open her salwar, she resisted. The salwar got torn which she has not submitted to the police officer. When she fell down on the ground she too got injured. She was treated in the hospital. Her grandfather too was treated in the hospital. She did not have a watch, so she doesn't know that for how long she was lying on the ground. The accused came empty handed. Some outsider came to the place of occurrence but no one rescued. It is not the case that she used to get goods from the accused's shop but she used to buy goods from the market. It is not that such an incident did not happen and testimony was taken in the wrong case.

9. PW-4 in his examination-in-chief stated that on 06.01.2012, he was posted as MO in Sekhopur Sarai PHC. On the same day he examined the wound of Chamari Ram (80 years) and found: -

1. Pain and tenderness as the left forearm.

2. Pain and tenderness all over the body.

Advised x-ray for injury no 1 and injury no



2 caused by HBS and simple in nature.

He further stated that this injury report is written and signed by him. In his cross-examination, he stated that he just wrote what he saw and observed. He had treated him from the beginning. When the patient came, he was in pain from the injury. The time has not been mentioned on the report. It does not mean that the report was given wrongly.

10. PW-5 in his examination-in-chief stated that he is aware of the incident and the incident occurred 13 months back. He heard that there was a fight between Chamri and Kelu. Chamari had purchased some goods from Kelu's shop and a dispute arose over asking to pay the money back. In his cross-examination, he stated that Kelu is also known as Saheb Mahto, the accused Sunny is his son. He voluntarily gave the testimony.

11. PW-7 in his examination-in-chief stated that on 06.01.2012, he was posted as a Police Inspector in Shekhopur Sarai PS. On the basis of fardbeyan, he registered the case and took the charge of the case and examined the witnesses. He logged the statement of Chamari Ram and Babita Devi and sent them to the hospital for the purpose of there treatment. He then went to the place of occurrence and saw that to the west of informant's house, which was facing north, there



is a thatched hut. There is a toilet in the north-west corner and the incident which is mentioned is of on the door of the toilet. To the south of the house is the lane leading towards the village and to the east of Buddhan Mahto is the house of the Informant. To the west is the private land of the informant. On 09.01.2012, Basant Mahto, Prabhudh Sao and Krishna Nandan was examined and observation note was formed. Then he was transferred so the charge was given to the SHO. Ganesh Singh was given the duty to examine the case. Chamari Ram was injured, so the F.I.R. is in the handwriting of Kapildev.

11.i. In his cross-examination, he stated that on 06.01.2012, from the information obtained from the investigation, he visited the place of occurrence. The informant did not submitted the cloths nor did he took it. Chowkidar told that the statement of a total of three witnesses were recorded in the police station and the rest were recorded at the place of occurrence. The statements of the neighbors were also recorded. They are the native of the same palace. He further stated that there was not any band aid on the injury. He doesn't remember when he met the witnesses after taking the statement from the Thana. It is not true that the place of incident was not inspected and they were not sent for treatment and the statement was



taken while sitting at the Thana. And it is not true that the investigation is wrongful.

12. PW-8 stated that he joined the Shekhopur Sarai PO on 16.03.12 and on 19.03.12, this case was handed over to him. He tried to get the injury report, but the doctor told him to send him the report later. Further on the order of the senior officer, he submitted the charge-sheet. He stated that the hand is fractured and plastered. The doctor told him that he will send the X-ray report after he get the report. On 31.03.2012, Rajkumar was charged under Sections 447, 341, 354, 376 read with 511, 325 and 506 of the IPC. In his cross examination, he stated that he was with his senior officer and he has submitted the charge-sheet as per their order. There is no such thing that he has submitted the charge-sheet on his own.

13. After closure of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the present case.

14. Learned counsel for the appellant submits that the impugned judgement of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and



erroneously passed the judgement of conviction and order of sentence and from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the prosecution's case is false and fabricated.

14.i. He further submits that Dr. Md. Vasim, (PW-4), who examined the injured person PW 1 and found two injuries in which Injury No. 1 advised for X-Ray but X-ray not brought on record and the injury no. 2 is simple and caused by hard and blunt substance and on cross examination, the Doctor fairly stated that the injured has not turned up later and upon injury report he did not mentioned the time. The depositions of the PW-1 Grand Father of the Informant and his daughter-in-law PW-2, who are family members and interested persons and the same has not been corroborated by any other plausible evidence, specially with the depositions of the PW-3. Further, there is vital contradiction in depositions of the PW-3 the informant/victim with respect to sustaining allegation under Section 354 of the IPC read with side by side depositions of PW 1 and PW 2 & PW No. 7,

14.ii. He further submitted that so far as Section 376 read with Section 511 of the IPC has leveled in this case, with an ulterior view to make the offence graver against the



appellant, due to admitted neighbor's feud & grudge with respect to father of the Appellant (Saheb Mahto's general shop dues). Learned counsel further submitted that as this appeal is of the year 2014 and occurrence is of the year 2012, where, the appellant has suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 12-13 years. So, the appellant should have been acquitted from the conviction as sentenced against him.

15. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

16. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and as well as given thoughtful consideration to the submissions advanced by both the parties.

17. On deeply studied and scrutinized all



evidences, it is evident to note that even though PW-1 and PW-2 are family members and interested witnesses, but they are natural witnesses and injured witnesses. They came instantly at the place of occurrence after hearing the scream of victim, which is so spontaneous and contemporaneous to the instant fact that there is no chance of fabrication. So their testimony is relevant and reliable in the present fact and circumstances as per section 6 of the Indian Evidence Act which read as follow:-

6. Relevancy of facts forming part of same transaction.

“Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.”

18. It is also a well settled law that testimony of witnesses otherwise inspiring confidence of court cannot be discarded on the ground that they are the family members of the victim. Further there appears no contradiction, inconsistency or exaggeration in the testimony of theses injured witnesses. They all corroborated with each other in most natural way from the testimony of victim/informant (PW-3) and fully supported the prosecution case. Moreover IO has also been examined who has inspected the place of occurrence and confirmed the same. The distinction between an attempt to commit rape and to commit



sexual harassment is something very meager. There should be some action on the part of the accused which would show that he is just going to have sexual connection with the informant. The prosecution is required to prove that the act has gone beyond the stage of preparation.

19. In order to fall under the ambit of ‘attempt to rape’ the accused and the victim should have at least been undressed to the extent that had there been no impediment, the accused/appellant would have committed the offence of rape. The Hon’ble Apex Court in the case of ***Madanlal v. State of J&K, (1997) 7 SCC 677*** held that there is a difference between preparation to commit rape and attempt to commit rape. He submitted that mere preparation to commit the offence is not punishable under the Penal Code. The Apex Court stated the following principal in ***Madanlal (supra)***:

“12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt commit rape has been committed is that the accused has gone beyond the stage preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina



and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 of the IPC.”

20. At this stage, it becomes imperative to examine the legal provisions incorporated in the Penal Code relating to outraging the modesty of a woman/girl under Section 354 of the IPC. Section 354 of the IPC reads as under:

*“354. Assault or criminal force to woman with intent to outrage her modesty.—
Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

21. This court in the case of ***Md. Zafre Imam @ Mangla V. State of Bihar*** in ***Cr. App. No. 153 of 2008***;

“On evaluation of the entire evidence and documents on record, it has been proved beyond shadow of all reasonable doubt that on the night of 21.03.2002 at around 8 PM, victim aged about 14 years, had gone out of the house to defecate. At that time the accused/appellant Md. Zafre Imam @ Mangala son of Kayum Shah of his village was coming in an inebriated state after drinking toddy and on seeing victim alone, he caught her and tried to rape her



forcefully. When victim started shouting, the informant's younger son Hashim reached there and then the appellant left her and ran away. So considering above mentioned judgments and the fact that the accused/appellant forcefully took the victim and threw her on the weed and thereafter opened the strings of her salwar has been stated by the victim and the same is corroborated by the statements of the other prosecution witnesses and even admitted by the appellant, the appellant is clearly guilty of the offence punishable under Section 354 of the IPC"

22. Here in this case the evidence is that the accused caught the victim cum informant when she came out from washroom situated near the *rasta* on her land and knocked her down and misbehaved indecently after removing lungi and salwar. The informant has not stated that the accused after knocking her down made her naked. She has stated that when the accused started misbehaving her she raised alarm then her grandfather came and saved. Under the above fact it is apparent from the evidence that he did not expose nor attempted to expose his private parts. Thus it is apparent that the accused has not gone beyond the stage of preparation. There appears no cogent reason that why the minor informant would falsely implicate the accused for the occurrence said to be occurred at 7.45 PM near the house of the informant. Therefore in my



considered opinion the charge of attempt to commit rape is not made out and the facts proved brings the case within the ambit of Section 354 of the IPC beyond doubt and the accused can well be held guilty under minor offence.

23. On a close scrutiny and critical analysis of the evidence of the witnesses this Court find that the prosecution has been able to prove its case beyond shadow of all reasonable doubt, that the accused used criminal force against the informant with intention to outrage her modesty which can culled out from the evidences adduced by the prosecution also. So, the act comes under the ambit of Section 354 of the IPC and thus the prosecution has also able to prove the fact that when she was coming back after defecate the accused caught her and after knocking her down misbehaved indecently with her and on hulla when PW-1 and PW-2 came to save her grand-daughter and daughter respectively the accused assaulted them and fled away.

24. So, considering all the materials available on record and aforesaid judgements, this court is of the view that the judgement of conviction and order of sentence dated 21.12.2013 respectively passed by the learned Additional Sessions Judge, Sheikhpura in Sessions Trial No. 468 of 2012



arising out of Shekhopursarai P.S. Case 02 of 2012 / G.R No. 18 of 2012, the charges levelled against them is proved beyond shadow of all reasonable doubt, so the conviction against them is upheld and affirmed under Sections 354, 341 and 323 of the IPC.

25. The Hon'ble Apex Court in the case of *State of U.P. vs Tribhuwan, (2018) 1 SCC 90* has laid down that, time spent in custody by a convicted person, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set-off under Section 428 of Cr.P.C.

26. Further, it is evident that the appellant was 19 years old at the time of impugned judgement and has served 4 months judicial custody and undergone persistent agony on account of the same. There are also no adverse report against the appellant about his conduct otherwise the same would have been brought to our notice by learned counsel for the State. As this appeal is of the year 2014 and occurrence is of the year 2012, where, the appellant has suffered and undergone persistent agony on the account of the same and is struggling for the defence since last 11-12 years, the sentence of the appellant is reduced to period undergone and the appellant stands discharged



of the liabilities of his bail bonds, if any.

27. Accordingly, the Appeal is partly allowed.

28. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

sunnykr/-

AFR/NAFR	NAFR
CAV DATE	11.07.2025
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