

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.261 of 2004**

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Bharat Mahton, son of Raghu Nandan Mahton, resident of village Chilmil Tola, P.S. Mufassil, district- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kishore Prasad, Advocate
Mr. Madhukr Pandey, Advocate
For the Respondent/s : Mr. Ramchandra Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT**

Date : 10-10-2025

By this appeal, appellant/convicted accused Bharat Mahton is challenging the judgment of conviction dated 22.03.2004 and order of sentence dated 25.03.2004, passed by the learned 5th Additional Sessions Judge, Begusarai, in Sessions Trial No.231 of 2002 = G.R. Case No. 2530 of 2001, arising out of Muffasil Police Station Case No.289 of 2001, by which the appellant was convicted for the offence punishable under Section 376 of the Indian Penal Code. The appellant sentenced to undergo rigorous imprisonment for 10 years for the offence punishable under Section 376 of the Indian Penal Code with the benefit of set off.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:



(i) One Sumitra Devi made her *fardebayan* on 28.10.2001 before the police, stating therein that on 19.10.2001 at about 8:00 p.m. at night, she was at her house, lying on a *chouki* (cot) with her son Chamak Sah. At that time, she was sleeping in the courtyard, and her husband had gone to village Chandpura for casting (making) a statue of Goddess Durga. She alleged that at about 8:00 p.m., her neighbour Bharat Mahton came into her courtyard (*aangan*) and sat on her *chouki* (cot). He wanted to give her a note of Rs. 50/-, which she refused. Thereafter, he threw the note on her (the informant's) body and committed rape on her.

(ii) The informant has further alleged that when her son Chamak Sah protested, Bharat Mahton assaulted him and also threatened the informant to kill her. Informant Sumitra Devi raised an alarm (*halla*), but her cries could not be heard due to the noise created by a diesel engine that was being operated near her house. As no one came to her house in response to her alarm (*hulla*), Bharat Mahton again entered her courtyard (*aangan*). Thereafter, the informant ran to the house of Anup Mahton and narrated her plight to her *nanad* (husband's sister) Durbal Devi and the wife of Anup Mahton, but nobody helped her. In her *fardebayan*, informant Sumitra Devi also stated that she had handed over her undergarment (*saya*) to the police.



3. On the basis of the aforementioned *fardebayan* of informant Sumitra Devi, the police registered Muffasil P.S. Case No. 289/01 on 28.10.2001, under Section 376 of the IPC against accused Bharat Mahton. Investigation proceeded, and after completion of the investigation, the police submitted charge sheet bearing No. 358/01 on 26.12.2001 under Section 376 of the IPC against accused Bharat Mahton.

4. After submission of the charge sheet referred to above, the learned Chief Judicial Magistrate took cognizance of the case, under Section 376 of the IPC, against the accused on 04.01.2001. After commitment of the case to the Court of Sessions vide order dated 31.05.02, as referred to above, the record of the case was received by way of transfer for Trial. Thereafter, the charge under Section 376 of the IPC was framed on 19.07.02, to which he pleaded not guilty and claimed to be tried. Thus, the sole accused, Bharat Mahton, was put on trial.

5. To prove the charges leveled against the sole accused, the prosecution has examined altogether 13 witnesses, namely, Sheojee Mahton (PW-1), Tripurari Mahton (PW-2), Asharfi Devi (PW-3), Narayan Mahton (PW-4), Awadh Sah (PW-5), Parma Nand Yadav (PW-6), Durbal Devi (PW-7), Chamak Kumar (PW-8), Rabindra Nath Tripathi (PW-9), Sumitra Devi-informant (PW-10), Hare Krishna Sao (PW-11), Dr. Savitri



Adhikari (PW-12), and Ashok Kumar Sinha (I.O., PW-13). and also produced nine documentary evidence.

6. The following documentary evidence has been adduced on behalf of the prosecution:

- i. *Exhibit-1 : Signature of Awadh Sah (PW-5) on the seizure list.*
- ii. *Exhibit-2 : Statement of the informant (the victim) recorded under Section 164 Cr.P.C.*
- iii. *Exhibit-3 : Signature of Hare Krishna Sah on the fardbeyan.*
- iv. *Exhibit-4 : Signature of Hare Krishna Sah on the seizure list.*
- v. *Exhibit-5 : The examination report by Dr. Savitri Adhikari (PW-12) with respect to the informant (the victim).*
- vi. *Exhibit-6 : Fardebyan of the informant*
- vii. *Exhibit-7 : Formal FIR*
- viii. *Exhibit-8 : The endorsement on the FIR*
- ix. *Exhibit-9 : The report of Forensic Science Laboratory, Bihar, Patna bearing F.S.L. No. 1011 of 2001, dated 05.09.2001.*

7. The Trial Court, upon considering the entire oral and documentary evidence, found that the charges levelled



against the accused has been proved beyond all reasonable doubts. Accordingly, the appellant was convicted under Section 376 of the Indian Penal Code.

8. Being aggrieved and dissatisfied with the judgment of conviction dated 22.03.2004 and order of sentence dated 25.03.2004, the appellant has preferred the present criminal appeal.

9. Heard Mr. Rajendra Kishore Prasad assisted by Mr. Madhukar Pandey, learned Counsel appearing on behalf of the appellant, and Mr. Ramchandra Singh, learned Additional Public Prosecutor appearing on behalf of the State.

10. Learned Counsel for the appellant submits that the date of occurrence according to the *fardebayan* is 19.10.2001, but the date on the *fardebayan* is 28.10.2001. He further submits that the allegation of rape has been made in the FIR, but there is a delay of nine days in lodging the FIR, which has not been explained. He further submits that altogether 13 prosecution witnesses have been examined. PW-1, PW-3 and PW-4 have not supported the prosecution case but they have not been declared hostile by the prosecution. PW-6 has also not supported the case of the prosecution and has been declared hostile by the prosecution. Counsel also submits that PW-2 is the adjacent neighbor, who stated in his cross-examination that the victim has



10 children. The said prosecution witness has further deposed that the name of the appellant was inserted in this case due to dirty village politics. He submits that PW-2 has not been declared hostile, and, therefore, the evidence of PW-2 itself creates doubt on the prosecution story. He further submits that PW-5 is the seizure witness, but during his cross-examination, he categorically deposed that nothing was recovered in his presence, and at the time his signature was obtained, he was not able to read what was written on the said paper. He further submits that only two witnesses have made allegation of rape against the appellant, i.e., PW-8 and PW-10. PW-8 is the son of the victim, and PW-10 is the victim herself. He submits that the allegation of rape has been made against the present appellant, but PW-8 has deposed that he has three brothers and four sisters, all were sleeping on the same cot. He also stated that one of the babies was lying adjacent to the mother. The victim, in her deposition, has stated in her cross-examination that she has seven children, her eldest son has a child aged about two and half years, and her second daughter has not conceived even after five years of marriage.

11. Counsel further submits that the medical evidence does not support the allegation of rape, as PW-12 (doctor), in her report, found no injury on the body. It was also



found that there was no injury on the internal or external private parts of the victim. He further submits that the alleged occurrence took place on 19.10.2001, the FIR was lodged on 28.10.2001, and on the same date, the undergarment (*saya*) was handed over to the Investigating Officer (I.O.). The I.O. sent the clothes for FSL analysis, and the FSL reported about the presence of sperm on the said clothes. However, he submits that in cross-examination, the I.O. categorically stated that there is no mention in the diary that the sperm of the victim's husband or the accused was collected or sent for examination. He submits that after about nine days of the occurrence, undergarment was sent for forensic examination, but no conclusion has come that whether the sperm found on the undergarment of the victim is of her husband or of the appellant.

12. Considering this fact along with the deposition of PW-2, the allegation of rape cannot be proved beyond all reasonable doubt. He further submits that during cross-examination and from prior evidence, it transpires that both the accused and the victim were well known to each other, and the story of loan has also emerged in the evidence of both PWs and DWs. It also came out in the suggestions that the appellant had given a loan of Rs. 8000/- to the victim's family for the marriage of her daughter, which was being continuously demanded by the



appellant, and no cross-examination was made on this point by the prosecution, which creates doubt on prosecution story.

13. Counsel for the appellant concludes his argument by submitting that the appellant has been in custody for about five years, one month, and twenty-eight days, and the prosecution has not proved its case beyond all reasonable doubt, as the statements of the prosecution witnesses are not reliable beyond reasonable doubt.

14. In conclusion, he submits that even if this Court reaches the conclusion that a physical relationship took place between the victim and the accused, the said relationship cannot be termed as rape in the light of the documents and evidence available on record. At worst, it may be considered a consensual sexual relationship between the victim and the accused. Therefore, in the present facts and circumstances, he submits that no case under Section 376 of the Indian Penal Code is made out, and the accused may be acquitted.

15. Learned APP, on the other hand, submits that it is true that no material has been found from PW-1, PW-3, PW-4, and PW-6. However, he submits that the most crucial evidence is of PW-8 (son of the victim) and PW-10 (the victim herself). He further submits that it is also true, from the record of the case,



that the FIR was lodged after a delay of nine days. Nevertheless, he contends that the place of occurrence, the manner of occurrence, and the manner of the crime are established on record by virtue of ocular evidence. He further submits that the clothes was sent for examination to the FSL, and the FSL, in its report, found that human sperm was present on the cloth. As to whether the sperm belonged to the husband of the victim or to the appellant, learned APP submits that these are minor contradictions, which the Court ought to ignore, more particularly, when the place of occurrence and the manner of occurrence are already established on record. He further submits that the judgment and order passed by the Trial Court is a well-reasoned one, and there is no need of any interference. Accordingly, he prays that the present appeal be dismissed.

16. After hearing the parties as well as upon perusal of the lower court records, it transpires that there are in total 13 witnesses in the present case, namely, Sheojee Mahton-co-villager (PW-1), Tripurari Mahton-co-villager (PW-2), Asharfi Devi (PW-3), Narayan Mahton (PW-4), Awadh Sah (PW-5), Parma Nand Yadav (PW-6), Durbal Devi (PW-7), Chamak Kumar son of the informant (PW-8), Rabindra Nath Tripathi (PW-9), Sumitra Devi-informant (PW-10), Hare Krishna Sao (PW-11), Dr. Savitri Adhikari-doctor (PW-12), and Ashok



Kumar Sinha (I.O., PW-13).

17. Before I come to the ocular evidence on record, this Court deem it fit to take note of the medical evidence adduced by the prosecution. This Court noticed that according to the evidence of PW 12 Dr. Savitri Adhikari, who deposed that she had examined Sumitra Devi, the informant, on 29.10.2001 and found no injury on her person. She has further deposed that in course of examination some abnormal discharge was seen in the uterus and, hence, her vaginal swab was taken for pathological examination but no spermatozoa was seen. She has brought on record her report which has been marked as Ext. 5.

18. P.W.1 Sheo Jee Mahton has deposed in his evidence that no occurrence took place with Sumitra Devi. In his cross-examination, he stated that Sumitra Devi has nine children and is an old lady, having no use. This witness has not supported the prosecution case, but has not been declared hostile by the prosecution.

19. P.W.-2 Tripurari Mahton has deposed in his evidence that he does not know anything about the alleged occurrence. In his cross-examination, this witness deposed that Sumitra Devi has ten children. He also stated that he had informed the police that the accused, Bharat Mahton, has been implicated in this case due to dirty village politics. This witness



has not supported the prosecution case but has not been declared hostile by the prosecution.

20. P.W.3 Asarfi Devi has deposed in her evidence that she does not know anything about the occurrence and she had not been examined by the police. This witness has also not been declared hostile by the prosecution.

21. P.W.4 Narayan Mahton has deposed in his evidence that he does not know anything about the occurrence and he had not been examined by the police.

22. PW-5 Awadh Sah deposed in his evidence that he proved his signature on the seizure-list, which has been marked as Exhibit-1. During his cross-examination, he stated that nothing was recovered in his presence and, at the time of obtaining his signature, he was not able to read the contents.

23. P.W.6 Parma Nand Yadav has deposed that he does not know anything about the occurrence and he was not examined by the police. During his cross-examination, he deposed that Sumitra Devi is an aged lady and no alleged occurrence of rape had taken place with her. This witness has been declared hostile by the prosecution.

24. PW-7 Durbal Devi is *nanad* (husband's sister) of the victim. As per the contents of the FIR, the victim, Sumitra Devi, had fled to the house of this witness after the alleged



occurrence and informed her about the incident. Hence, the evidence of this witness carries considerable weight. This witness has deposed that at the time of the occurrence, she was in her house, which is located near the house of Sumitra Devi. After hearing the alarm (*hulla*), she went to Sumitra Devi, who informed her that Bharat Mahton had committed rape on her (Sumitra Devi) after entering her house at the point of pistol. During her cross-examination, this witness denied that Sumitra Devi used to take loan from Bharat Mahton. She further deposed that her house is located near the house of Sumitra Devi, and between her house and the house of Sumitra Devi, the houses of Ramautar Mahton and Chalitar Mahto are also situated. In paragraph 5 of her cross-examination, she stated that after the occurrence, she remained in the house of Sumitra Devi for about two hours. She further deposed that no one came there after hearing the alarm, as a *futfutia mill* was being operated by a diesel engine nearby. She also stated that after the occurrence, she came to the place of occurrence with Sumitra Devi and her husband, and she (PW-7) was also examined by the police, before whom she narrated the entire incident.

25. The most crucial and vital witness is PW-8, Chamak Kumar, who is the son of the victim Sumitra Devi. As per the contents of the FIR, he (PW-8) was sleeping near his



mother at the time of the occurrence. Hence, he is the only eyewitness to the occurrence, besides his mother, victim Sumitra Devi. It appears that at the time of recording his evidence, the learned Court assessed his age to be around 12-13 years. Accordingly, his age would have been approximately 11-12 years at the time of alleged occurrence. PW-8, in his evidence, deposed that the occurrence took place about one year and six months ago. At that time, it was between 8:00 to 9:00 p.m., and he was sleeping with his mother, as she was suffering from fever. In the meantime, Bharat Mahton arrived, brandished a pistol, and committed rape with his mother. Thereafter, Bharat Mahton offered Rs. 50/- to his mother, but she refused to accept it. PW-8 then raised an alarm (*hulla*), but the same could not be heard by others, as the sound was drowned out by the noise of an engine through which a mill was being run. Thereafter, Bharat Mahton also assaulted him. This witness has categorically deposed that he identified Bharat Mahton in the light of a lantern. He (PW-8) further narrated the manner of the occurrence in paragraphs 9 and 10 of his evidence. In paragraph 16 of his testimony, he categorically denied that Bharat Mahton had given any loan for the marriage of his (PW-8) sister.

26. PW-9 is Rabindra Nath Tripathi, a Judicial Magistrate, who recorded the statement of the victim, Sumitra



Devi, under Section 164 of the Cr.P.C. He deposed that, on 02.11.2001, as per the direction of the learned Chief Judicial Magistrate, he recorded the statement of Sumitra Devi under Section 164 Cr.P.C. He brought the said statement on record, which has been marked as Exhibit-2.

27. P.W.10 Sumitra Devi is the victim lady. Hence, her evidence carries much importance. She has deposed in her evidence that the occurrence took place about two years ago, at around 8:00 or 9:00 p.m. At that time, she was ill and was sleeping on a cot in the courtyard with her son Chamak Sah (P.W.8). At that time, Bharat Mahton came there and sat on the cot, and thereafter showed a note of Rs. 50/-, which she refused. Thereafter, Bharat Mahton committed rape with her at the point of pistol, which was also protested by her son. After the occurrence, she raised an alarm, but her voice could not be heard by the people in the vicinity due to the sound of a diesel engine. She identified Bharat Mahton in the light of a lantern. She further deposed in paragraphs 7, 8, and 9 of her evidence that after the occurrence, she fled on the road after raising the alarm. Thereafter, Bharat Mahton threatened to shoot her, and she went to her Nanad (P.W.7) and narrated the entire occurrence. She had stated all the facts to P.W.7, but nobody protested. Due to rape, her undergarment (*Saya*) was wet. She gave the aforesaid



undergarment (*petticoat*) to Darogajee. After the occurrence, while she was going to the police station, Daroga jee met her on the way near "Durgasthan Chouk," where she narrated the entire occurrence, and her statement was recorded. Darogajee thereafter explained the statement to her, over which she put her thumb impression after finding it correct. She has narrated the manner of occurrence in detail in paragraphs 13, 14, 15, 16, and 17 of her evidence, which is consistent and trustworthy. In para 19 of her evidence, she (P.W.10) has deposed that at the time of the occurrence, she had bitten Bharat Mahton with her teeth. Thereafter, he thrashed her from his lap and she fled towards a room. Bharat Mahton remained confined in the house after the occurrence. Thereafter, she came to Durbal Devi (P.W.7) and narrated the entire occurrence to her (PW 7). She remained with her 'Nanad' Durbal Devi (P.W.7) for about two hours, and thereafter, she returned to her home with her (P.W.7). She has also narrated the occurrence in the morning. In para 17 of her evidence, she has deposed that she lodged the case with the police after the arrival of her husband. She went to Darogajee, where her whole body was examined by women police, and on the next day she was sent to a doctor for examination. She has also deposed that she handed over her clothes to the police, which she had worn at the time of the occurrence, for which a



seizure list was prepared, and she gave her thumb impression on it. In para 22 of her evidence, she has categorically denied the fact that she had taken loan from Bharat Mahton at the time of her daughter's marriage. She has also denied the suggestion of the defence that she falsely implicated Bharat Mahton in this case with intention to misappropriate the aforesaid loan amount taken by her from Bharat Mahton on the occasion of her daughter's marriage.

28. P.W. 11 is Hare Krishna Sah. He is the husband of the victim lady Sumitra Devi. In his evidence, this witness (P.W.11) has deposed that on the date and time of occurrence, he had gone to cast (prepare) an idol in Neema Chandpura village, where he received information that Bharat Mahton had committed rape on his wife. Thereafter, he came home, where she (P.W.10) narrated the entire occurrence to him. After hearing about the incident, he was proceeding towards the police station with his wife to lodge a case, and when they reached near Rajaura Haldiya Durgaasthan, Darogajee (the Officer-in-Charge) met them. At that place, the police recorded the statement of his wife, on which she gave her thumb impression, and he signed it. His signature on the fardbeyan has been marked as Ext-3. This witness has also proved his signature on the seizure list, which has been marked as Ext-4. He further



deposed that when he reached his house on the morning of 28.10.2001, several persons had assembled there, and he inquired about the matter in the presence of 10 to 20 persons. He denied the suggestion that he had any dispute with Bharat Mahton due to the purchase of land from Ramjee Mahton. He also denied the suggestion that he had taken a loan from Bharat Mahton and filed this false case when Bharat Mahton demanded back the loan amount.

29. P.W.13 is the Investigating Officer (I.O.) of this case. He has deposed that on 28.10.2001, he was posted as Sub-Inspector of Police at Musfasil P.S. On that day, the Officer-in-Charge, Shyama Kant Jha, registered Musfasil P.S. Case No. 289/01 on the basis of the fardbeyan of Sumitra Devi. Thereafter, he (P.W.13) was entrusted with the investigation of the case. On the same day, at about 4:00 p.m., he inspected the place of occurrence in the presence of Chamak Sah and other witnesses. He has described the place of occurrence at paragraph 3 of his evidence in detail. He further deposed that the witnesses Asarfi Devi (P.W.3), Parma Nand Yadav (P.W.6), and Sheo Jee Mahton (P.W.1) had fully supported the prosecution case during their statement recorded in his presence. He got the statement of Sumitra Devi recorded under Section 164 Cr.P.C., and later received the medical examination report of the victim. He further



deposed in paragraph 12 of his evidence that he also sent the seized undergarment (*Saya*) to the Forensic Science Laboratory, Patna. After completing the investigation, he submitted the charge sheet bearing No. 358/01 dated 26.12.2001 against the accused, after finding the occurrence true. This witness has brought on record the fardbeyan, formal FIR, and the endorsement on the fardbeyan, which have been marked as Exhibits 6, 7, and 8, respectively.

30. From the above discussion there are certain materials which are apparently found by this Court in the record. The occurrence took place on 19.10.2001, but admittedly fardbeyan has been lodged on 28.10.2001, i.e., delay of about nine days, but the said delay has nowhere explained. There are witnesses, who are adjacent neighbours of the victim, i.e., PW 1 Sheoji Mahto, PW 2 Tripurari Mahto and PW 3 Asharphi Devi, produced by the prosecution completely denied the said occurrence and not supported the prosecution case. One of the witness has deposed that appellant has been implicated in this case due to dirty village politics. All those prosecution witnesses having not been declared hostile by the by the prosecution. Only two witnesses PW 8, the son of the victim, and PW 10, victim herself, have supported the allegation of rape but it has also been deposed in their evidence particularly by the son of the victim



that they have three brothers and four sisters all were sleeping on the same cot. One baby was lying adjacent to the mother and on the same cot rape has been committed, i.e., in presence of the children of the victim. It has also been stated by the said witness that after committing rape the appellant offered Rs.50/- to the victim but she refused to accept the same. The another aspect, which creates doubt, is the production of her clothes to the police which was sent for forensic test, but the I.O. has not sent the semen of the accused and of the victim's husband to ascertain that the semen detected on the clothes is of her husband or of the accused-appellant.

31. From the materials on record, it transpires to this Court that both the accused and the victim's family are well known to each other and appellant frequently used to visit to the house of the victim. The appellant has come with the story in his defence that the appellant has helped to the victim's family by way of providing help of Rs.8,000/- (rupees eight thousand only) to the victim's family, which he used to demand repeatedly and with a view to teach lessen, a false and concocted case has been filed by the informant side upon the present appellant. It is true that the statement of the victim has come in FIR has been supported by her statement under Section 164 Cr.P.C. and also in evidence. But it is also true that prosecution witnesses at least



three in numbers, who were not declared hostile and deposed against the prosecution, which cannot be ignored by this Court.

32. After analyzing the evidences and materials on record, this Court finds that the relation which has been developed between appellant and the victim was not actually rape; rather a consensual physical relation by which the family members were well aware and it is due to this reason in spite of the fact that the date of occurrence was 19.10.2001 and FIR has been lodged after a delay of nine days and no reasonable explanation has been made. Non-examination of semen of the appellant creates reasonable doubt in the mind of this Court that the sperm, which has been found by the Forensic Science Laboratory, is of the appellant or of the husband of the victim.

33. The medical report and the doctor PW 12 have not found any sign of rape on the person of the victim. The doctor has categorically deposed that on examination of her whole body, face, chest, back, breast, abdomen and medial side of thigh, no injury was found. It has also been opined by the doctor, on examination of her private part, that there is no injury externally or internally was found. The doctor also not found spermatozoa. The report of the doctor also creates reasonable doubt to this Court and this Court reaches on the conclusion that



prosecution has failed to prove his case beyond all reasonable doubts.

34. The Hon'ble Supreme Court of India has already held in the case of **Deepak Gulati Vs. State of Haryana** reported in **(2013) 7 SCC 675: AIR 2013 SC 2071** and held that in case of rape and consensual sex; the Court must examine whether the accused had actually wanted to marry the victim or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. In cases of mere breach of a promise and not fulfilling a false promise, the Court must examine whether at an early stage a false promise of marriage was made by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. The accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused is mala fide, and that he had clandestine motives.

35. In the case of **Kaini Rajan Vs. State of Kerala** reported in **(2013) 9 SCC 113**, the Hon'ble Supreme Court held as under:-

“Interpretation to Section 375 defines the expression "rape", which indicates that the first clause operates, where



the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression "against her will" means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.

36. Here in the present case, upon careful study of the relevant circumstances, particularly, the prosecution witnesses denied the story of rape and came forward with the



story of false implication. The evidence of PW 12, the doctor, who had examined the victim/informant and found no injury on her person. Upon pathological examination of vaginal swab, no spermatozoa was seen. The prosecution witnesses have deposed in cross-examination that the victim is an old lady having 9-10 children and also deposed that due to dirty village politics, the name of the appellant has been implicated in this case. The circumstances, under which the victim herself deposed that after rape, Rs.50/- had been provided by the appellant to the victim, but she refused to accept the same. The victim was sleeping at the time of occurrence on the cot in the court-yard with her sons and daughters and in their presence rape was alleged to have been committed. FIR was lodged after a delay of nine days without any explanation. Undergarment was sent for forensic examination, but no conclusion has come that whether the sperm found on the undergarment of the victim is of her husband or of the appellant. Rs. 8000/- was given to the victim's family by the appellant on the occasion of marriage of victim's daughter. The defence witness has suggested that victim's family had taken loan from the appellant and upon pressure to refund the same filed this false case against the appellant. All those situations create reasonable doubt in the mind of this Court that at least the essential parameter for the offence of rape are lacking in the



present case and if it has been accepted that physical relation developed between the victim and the appellant, then in that case it is only a consensual sex as decided in the case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra** reported in **AIR 2019 SC 327**, the consensual sex does not amount to rape.

37. In view of the above situation, this Court finds that it is not a case of rape; rather a case of consensual sex. Hence, this Court has no option but to hold that the ingredient of Section 376 of the Indian Penal Code is not attracted in the present case against the present appellant.

38. Considering the facts and circumstances of the case, this Court is of the firm view that the prosecution has failed to prove the charge under Section 376 of the Indian Penal Code against the appellant. Hence, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 22.03.2004 and 25.03.2004 respectively, passed by Sri Nisha Nath Ojha, 5th Additional Sessions Judge, Begusarai, in Sessions Trial No.231 of 2002, arising out of Muffasil P.S. Case No.289 of 2001, is quashed and set aside. The appellant is acquitted of the offence held to be proved against him. Since the appellant is on bail, his bail bonds are ordered to be cancelled and the sureties are discharged from their liabilities.



39. Let the Lower Court Records be sent back to
the learned Trial Court with a copy of this judgment and order.

(Dr. Anshuman, J)

Mkr/Aman Kumar/-

AFR/NAFR	NAFR
CAV DATE	24.09.2025
Uploading Date	10.10.2025
Transmission Date	13.10.2025

