IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.141 of 2005

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Kari Yadav, son of Sri Shivjee Yadav, resident of village-Atarwel, P.S.-Singhwara, District-Darbhanga.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Purnendu Keshav, *Amicus Curiae*
For the Respondent/s : Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 22-12-2025

The present appeal has been filed against the judgment of conviction dated 10.02.2005 and order of sentence dated 11.02.2025 passed by the learned Additional Sessions Judge, FTC-II, Darbhanga in Sessions Trial No. 186/1997 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.

2. Shorn of unnecessary details, the facts of the case are that the informant recorded her statement to the effect that while she had been sleeping on the *varandah* of her house and her daughter had been sleeping inside, on 24/25-02-1996 about 1.00 A.M., the appellant Kari Yadav came and gagged her mouth and forcibly committed sexual intercourse with her.

Some scuffle took place and she received injuries on both her legs. Hearing her muffled sound, her daughter woke up and raised alarm and Yogendra Yadav and Madan Yadav reached there and, thereafter, the appellant Kari Yadav fled away from the spot.

3. On the basis of the aforesaid statement of the informant, a formal FIR being Singhwara P.S. Case No. 15/1996 was instituted under Section 376 IPC. The police investigated the matter and submitted charge sheet under Sections 341, 323, 324 and 376 IPC against the appellant finding the case true. After taking cognizance, the case was committed to the court of sessions where charges were framed against the sole accused/appellant for the offence under Sections 323, 341 and 376 IPC, to which, the appellant pleaded not guilty and claimed trial.

4. During trial, the prosecution examined altogether six witnesses in support of its case and also exhibited some documents. In the documents exhibited by the prosecution, Exhibit 1 is writing and signature on *fardbeyan*. Exhibit 2 is forensic medical report of the victim and Exhibit 3 is the forensic report on the material seized by the police. The defence examined husband of the informant as its sole witness to deny the allegation.

5. The learned trial court, after consideration of the evidence, came to the finding that the accused was guilty of commission of offence under Section 376 IPC and further held that offence under Sections 323 and 341 were not made out against the appellant and ordered the accused/appellant to undergo rigorous imprisonment for seven years. The accused/appellant was taken into custody and vide order dated 21.03.2006, learned Single Judge of this Court enlarged the appellant on bail and since then it appears the appellant has been continuing on bail.

6. Since there has been no representation on behalf of the appellant when the matter has been taken up, this Court, vide order dated 29.11.2025, appointed Mr. Purnendu Keshav, Advocate as *Amicus Curiae* to assist this Court on behalf of the appellant.

7. The learned *Amicus Curiae* appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence is bad in law as well as on facts and are liable to be set aside. There is material contradiction in the evidence of prosecution witnesses. There was doubt over any occurrence taking place and the appellant was falsely implicated due to dispute between the victim and her husband and this appellant, who is nephew of the husband of the

victim/informant, got trapped in their fight. The learned *Amicus Curiae* further submitted that the learned trial court did not consider the evidence in proper prospective and did not appreciate the fact that investigating officer was not even examined, who seized the material exhibit and sent it for examination. The learned trial court further failed to appreciate that no independent witness had deposed in support of prosecution case though they were the best witnesses who, the victim claimed, came to the spot after the occurrence had taken place. The learned trial court further failed to consider the evidence of defence witness who was none else other than the husband of the victim/informant. The learned trial court completely discarded the evidence of the husband of the victim/informant.

8. The learned *Amicus Curiae* further submitted that foundation of the impugned conviction is severely eroded by the failure of the learned trial court to adhere to the duty of examining all evidence placed before it. However, the learned trial court entirely omitted any reference or discussion of the deposition of defence witness, namely Ramshresth Yadav, the estranged husband of the informant. The learned trial court unfairly went by the evidence of prosecution and such selective approach in consideration of evidence constitutes a fundamental

irregularity, directly impacting the fairness of trial and vitiating the final finding of guilt.

9. The learned *Amicus Curiae* further submitted that D.W. 1 Ramshresth Yadav deposed in his examination-in-chief that he was himself present at the place of occurrence/at his home between 20th and 28th February 1996 and no such occurrence ever took place at his home. The learned trial court did not appreciate the fact that the informant and her daughter reside along with her estranged husband in the same house and they share the same inner courtyard with the appellant and his family. The appellant is the nephew of the husband of the informant and considering the estranged relationship between the victim/informant and her husband, the court was legally bound to analyze the evidence of the defence and ought to have provided reasons for accepting or rejecting the evidence of the defence witness and in failure to do so demonstrates a flawed approach to the appreciation of evidence. This long standing family enmity, resulting in bias of the evidence of prosecution witnesses, was not taken into account by the learned trial court. When there is evidence of such deep-seated enmity, the testimony of the prosecution witnesses must be examined with ‘great care and circumspection’. The possibility of false implication due to this long standing family feud cannot be

overlooked, but the learned trial court failed to apply the essential test of prudence. The learned trial court passed its judgment of conviction solely based on the testimony of the informant (P.W.4) and her daughter (P.W.3), ignoring the fact that both of them are deeply interested witnesses.

10. The learned *Amicus Curiae* further submitted that the evidence of prosecution witnesses suffers from contradictions, though the victim deposing as P.W. 4 stated that the sexual assault on her continued for 6-7 minutes, her daughter, P.W. 3 initially suggested a duration of 3-4 minutes and subsequently enhanced it to 10-15 minutes. Such material and internal inconsistencies render the sole reliance on their testimony unsafe and the evidence decisively fails to meet the requisite standard of 'sterling quality' necessary to overcome the proven motive of enmity. The prosecution also failed in its attempt to establish immediate corroboration through P.W.s 1 & 2 as both were declared hostile and stated that they knew nothing about the occurrence. The testimony of a hostile witness cannot be relied upon by the prosecution unless corroborated by the other reliable evidence, which is entirely absent in the present case.

11. The learned *Amicus Curiae* further submitted that in the report of medical officer, who was examined as

P.W.6, no positive evidence of recent forcible intercourse was found. The learned *Amicus Curiae* conceded that while the absence of positive medical evidence is not fatal where the oral testimony is trustworthy, yet it becomes a crucial factor in favour of the accused when the oral testimony itself is shaky, contradicted and surrounded by a proven motive of false implication.

12. The learned *Amicus Curiae* further submitted that the FSL report (Exhibit 3) is not conclusive. Mere presence of disintegrated semen did not prove its source or connect it to the appellant. An inconclusive forensic report cannot be used to bridge the fatal gaps and deficiencies in the oral evidence.

13. The learned *Amicus Curiae* further submitted that the learned trial court acquitted the appellant of the related charges under Sections 323 and 341 IPC. When the learned trial court acquitted the appellant of charges under Sections 323 and 341 IPC, it is clear that the learned trial court considered the evidence regarding the use of force to be unreliable. The learned *Amicus Curiae* pointed out that since the injuries are said to be the direct result of struggle during forcible intercourse, the acquittal under Sections 323 and 341 IPC throws serious doubt on the core element of ‘without consent’ requires under Section 376 conviction, thereby undermining the final finding of guilt.

14. The learned *Amicus Curiae* further submitted that two of the independent witnesses, namely P.W.1 Yogendra Yadav and P.W.2 Madan Yadav are stated to have reached the place on hearing the alarm raised by the daughter of the victim/informant, but they turned hostile and did not support the prosecution case. P.W. 5 Ram Naraian Choudhary is a formal witness, who proved the *fardbeyan*. Even the doctor, who was examined as P.W.6, namely Dr. V.C.S. Verma, has only partially supported the prosecution case. The doctor has stated that he found two injuries on the victim and the injuries were on the right right elbow and back of left and right forearm. But the appellant has been absolved for these charges for assault and causing injuries. However, it is pertinent to note here that the doctor opined that there was no positive evidence indicating recent commission of forcible sexual intercourse. So there remains only two witnesses, namely P.W. 3 and P.W. 4, but they are highly interested witnesses and their evidence should be taken with a pinch of salt. However, in the evidence of P.W.3, who is the daughter of the victim/informant, it has come in cross-examination that the house of the informant and the uncle of the informant is in same courtyard and he was present with his family in the same house. The mother, two sisters and one brother of the appellant were present at that moment in the said

house. This witness has also stated about enmity between her mother and her father. Similarly, the manner of occurrence and duration of assault have not been properly established. If the evidence of the witnesses are contradictory, it is unsafe to rely on such evidence, as such evidence is not of 'sterling quality' as expected in trial for rape. In this regard, The learned *Amicus Curiae* referred to the decision of the Hon'ble Supreme Court in the case of ***Rai Sandeep @ Deepu vs. State of NCT of Delhi (Criminal Appeal No. 2486 of 2009)*** wherein the Hon'ble Supreme Court held that 'sterling witness' should be of a very high quality and caliber whose version should 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. The Hon'ble Supreme Court further held that the said version should consistently match with the version of every other witness. 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 as alleged against him. Applying these principles on the facts before it, the Hon'ble Supreme Court held that the solitary version of the chief-examination of P.W. 4, the prosecutrix, cannot be taken as gospel truth for its face value and in absence of any other supporting evidence, there was no

scope to sustain the conviction and sentence imposed upon the appellants.

15. The learned *Amicus Curiae* next referred to the case of ***Krishan Kumar Malik vs. State of Haryana (Crimina Appeal No. 1252 of 2011)*** wherein the Hon'ble Supreme Court on account of certain shortcomings, irregularities and lacuna on the part of the prosecution did not find it is safe to convict the appellant.

16. Thus, the learned *Amicus Curiae* submitted that the impugned judgment of conviction and order of sentence passed against the appellant are otherwise bad in law as well as on facts and are liable to be set aside.

17. On the other hand, the learned APP for the State vehemently opposes the submission made on behalf of the appellant. The learned APP submits that the prosecution has succeeded in proving its case beyond all reasonable doubts and the learned trial court has rightly convicted the appellant. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

18. I have given my thoughtful consideration to the rival submission of the parties and perused the material available on record.

19. The issue before this Court is whether the

prosecution has been able to prove its charge against the appellant beyond reasonable doubt and the judgment of the learned trial court is correct and does not suffer from any infirmity.

20. The prosecution has examined altogether six witnesses in support of its case. P.W. 1 Yogendra Yadav and P.W. 2 Madan Yadav are independent witnesses, who have stated to have reached the spot on alarm being raised by the daughter of the victim/informant. P.W. 3 Neelam Devi is the daughter of the informant and P.W. 4 Shiv Kumari Devi is the informant herself. P.W. 5 Ram Narain Choudhary appears to be a formal witness, who identified the handwriting and signature of Heera Singh, who recorded the *fardbeyan* of the informant. P.W. 6 Dr. V.C.S. Verma is the doctor, who examined the victim. P.W. 1 and P.W. 2 did not support the prosecution case and were declared hostile, whereas P.Ws. 3 and 4 supported the prosecution case.

21. So the whole case of the prosecution rests on the shoulder of the P.Ws. 3 & 4 and to some lesser extent on P.W.6. P.W. 3 in her examination-in-chief did not give any date of occurrence though in general terms stated about the occurrence taking place six years back. She further stated about Madan Yadav and Yogendra Yadav and others coming to the place of

occurrence on hearing alarm. In her cross-examination, this witness stated about estranged relationship between her mother and father and there being a case under Section 125 Cr.P.C. between them. She has also admitted that her mother has previous enmity with the father of the appellant. She also deposed that prior to lodging of the present case, two cases had been pending between them. In her cross-examination, she further deposed that the appellant kept on committing wrong act with her mother for 10-15 minutes. In paragraph 43, this witness deposed that the houses of her uncle and her mother are in same courtyard and at the time of the occurrence, her uncle, the mother of the appellant, his two sisters and brother were present in their house.

22. P.W. 4, who is the victim and informant herself, stated in her examination-in-chief that the appellant committed rape while she had been sleeping on *varandah* of her house. She also stated that on alarm being raised by her daughter, Yogendra Yadav, Madan Yadav and others came to the spot. She stated about the police recording her statement and taking her thumb impression on it. Her petticoat was seized and two witnesses put their signatures on the seizure list. She also stated about she being sent to DMCH for treatment. This witness also stated in her cross-examination that she filed a case against her husband

which has ended. In paragraph 6, this witness stated about her son staying with her. However, subsequently, this witness deposed in her cross-examination that her son was not present on the date of occurrence. This witness also stated that the appellant was more than sixty years old. In her cross-examination, this witness further deposed that she had previous disputes with the appellant and twice they have entered into altercation. This witness in her cross examination also stated that the appellant committed rape with her for 2-3 minutes and the appellant was with her only for this period only at the time of occurrence. In her cross-examination, this witness deposed that Yogendra Yadav, Madan Yadav, Bharosi Yadav, Bhagya Narayan Yadav etc. came to the spot and caught hold of the appellant, but he fled away. She also deposed that the appellant was tied with a rope.

23. P.W. 6, who is the doctor, who prepared medical examination report of the informant, found two injuries on the informant, one is abrasion over medial of right elbow joint and the other injuries are two linear scratches/abrasion over back of left leg on the lower half and back of right forearm in the middle. But this witness stated that vaginal swab and aspirations were taken but no spermatozoa motile or non-motile could be found under the microscopic examination. This witness deposed

that there was no positive evidence indicating recent commission of forcible sexual intercourse with the informant. Regarding injuries, this witness deposed that the same were caused 3-5 days back prior to the date of the examination and were caused by hard and blunt object as well as some pointed object.

24. Though Exhibits 1 and 2, which were writing and signature on *fardbeyan* and forensic medical report of the victim were proved, the material object for which forensic report (Exhibit 3) has been brought on record was not proved as the investigating officer was not examined in this case.

25. D.W. 1 Ramshresth Yadav is the husband of the informant and uncle of the appellant. This witness also deposed that all of them stayed in same courtyard in different rooms. This witness specifically deposed that the appellant never committed rape with his wife. She was scolded by the appellant as she refused to give mills to this witness. This witness also deposed that he transferred 15 *kathas* of land to his wife for her maintenance.

26. The learned trial court believing the evidence of P.Ws. 3 & 4 coupled with the evidence of doctor and exhibits produced on behalf of the prosecution went on to convict the appellant under Section 376 IPC and sentenced him to undergo

rigorous imprisonment for seven years. However, while considering the evidence, I do not find it to be open and shut case. The whole prosecution case is based on the evidence of P.Ws. 3 & 4. But then the evidence is to be looked into with accompanying circumstances. It has come on record in deposition of witnesses that the informant and her husband were having certain disputes and they were living separately for a few years. It has also come in the evidence of P.W.3 that her father takes side of appellant and his family. Considering all these facts together, the evidence of P.Ws. 3 & 4 are to be appreciated with minutest details. If what has been stated by P.Ws. 3 & 4 in their examination-in-chief is taken to be correct, considering their estranged relationship with other family members, further corroboration would be required. Moreover, there are contradictions even in the evidence of P.Ws. 3 & 4 especially about the duration of rape. Further, none of the witnesses who reached the spot on hearing the alarm support the prosecution case, rather they turned hostile and the prosecution failed to elicit any response in favour of the prosecution case from these witnesses. Then the doctor who was examined as P.W. 6 proved the medical examination report of the informant, but this report is quite damaging to the cause of the informant. The informant was examined on 26.02.1996 by the doctor and the occurrence

took place in the night of 25th/26th February, 1996. It has come in the evidence of the informant that she received injuries in her private part and her petticoat got stained with blood. In paragraphs 11 and 12 of her cross-examination, she also stated about the doctor taking out semen from her vagina. But in the medical examination, no injury was found on her private part though some injuries were found on elbow and leg and these injuries are merely abrasions and the doctor opined that the same were caused 3-5 days back. The doctor opined that there was no positive evidence indicating recent commission of forcible intercourse with the informant. Thus, the case brought by the informant in the FIR and in her evidence is not supported by medical evidence. Regarding other injuries, the learned trial court did not found the charges proved under Sections 323 and 341 IPC. Therefore, a big doubt arises over the prosecution case. Then the learned trial court completely ignored the evidence of the defence. Though the evidence is more or less regarding the dispute between the husband and wife, i.e., the informant and her husband, the same is quite important and material for the purpose to show previous dispute in the family and chances of false implication. It is not the case that the defence evidence has come in vacuum, but the same is corroborated in the cross-examination of P.Ws. 3 & 4 and cannot be said to be completely

unreliable. If the evidence of D.W. 1 is taken into consideration, he has specifically deposed that no occurrence as alleged by the informant has ever taken place.

27. Therefore, a reading of the evidence together, I am of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubt and in this case non-supporting medical examination report, non-examination of investigating officer and the background of family disputes show that the prosecution case has a shadow of doubt all along. Hence, conviction of the appellant on the basis of such evidence could not be sustained and upheld.

28. Hence, judgment of conviction dated 10.02.2005 and order of sentence dated 11.02.2025 passed by the learned Additional Sessions Judge, FTC-II, Darbhanga in Sessions Trial No. 186/1997 is set aside. The appellant is acquitted of the charge by giving him the benefit of doubts.

29. Since the appellant is on bail, he is discharged from the liability of the bail bonds.

30. Accordingly, the present appeal is allowed.

31. Let the lower court records be sent to the learned trial court henceforth.

32. Mr. Purnendu Keshav, learned *Amicus Curiae* was appointed to assist this Court on behalf of the appellant. I put

on record my words of appreciation for able assistance rendered by him. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand Only) to him towards his professional fee.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	06.12.2025
Uploading Date	22.12.2025
Transmission Date	22.12.2025