

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.2 of 2016**

Arising Out of PS. Case No.-59 Year-2014 Thana- MAHILA P.S District- Supaul

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Mukesh Sharma @ Mukesh Kr. Sharma, Son of Ramu Sharma, Resident of  
Village Parsauni Bakaur, P.S. - Supaul, District - Supaul.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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**Appearance :**

For the Appellant : Mr. Shashi Bhushan Prasad, Advocate  
For the State : Ms. Anita Kumari Singh, APP

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

**Date : 15-01-2026**

The instant appeal has been preferred against the judgment of conviction dated 04.11.2015 and order of sentence dated 09.11.2015 passed by the court of learned Additional Sessions Judge-I- cum- Special Judge, Supaul, in POCSO Trial No. 17/14 arising out of Supaul Mahila P.S. Case No. 59/14 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 366, 376 and 323 of the Indian Penal Code (in short 'IPC') and acquitted of the charged offences under Sections 366- A and 506 of IPC and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). The appellant has been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs. 10,000/-



separately for the offences under Sections 376 and 366 of IPC each, and in default of payment of fine, he has been directed to undergo simple imprisonment for one year additionally. For the offence under Section 323 of IPC, the appellant has been sentenced to undergo rigorous imprisonment for one year. All the sentences of imprisonment have been directed to run concurrently.

**Prosecution Story:-**

2. The prosecution case as appears from the complaint petition of complaint case bearing no. 438C/2014 filed by the complainant in the court of CJM, Supaul which is the basis of the institution of the prosecution's case, in brief, is that on 03.04.2014 at about 7:00- 7:30 p.m., when the informant/victim namely, 'N' (hereinafter referred to as 'N') who is said to be the minor daughter of 'M' (the real names of victim and her father withheld in order to conceal the identity of the informant/victim), went to the back side of the Utkramit Madhya Vidyalaya, Bijalpur Bakaur to ease herself, then her co-villager Mukesh Sharma (appellant) with the help of his three unknown associates caught hold of her and they gagged her mouth forcibly and then took her towards the east embankment of river *Koshi* situated nearby where at the point of pistol made her sit in a tempo and took her via Panchgachhiya Railway Station to the house of his cousin situated in a village and



confined her there in a room and in the night, he committed rape with her. During the course of committing rape, the appellant also assaulted her when she raised her protest and in the early morning he with the help of his associates took her to Saharsa Railway Station by a train. At the railway station upon seeing her co-villagers, she raised an alarm then upon hearing her alarm her co-villagers namely, Ajeet Mahto, Hare Ram Mahto and Satya Narayan Mahto and others rescued her but the accused/appellant Mukesh and his associates fled away thereafter, her co-villagers took her back to her house. As per the victim, at the time of occurrence her father was not present in her village, and after his returning back to home his father convened a *Panchayat* Meeting in the village but the accused refused to attend the said *Panchayat* so, she had to approach the police but as the police were adopting dilatory tactics in this regard, so, she filed her complaint in the court.

3. On the basis of complaint petition of the victim sent under Section 156(3) of Cr.P.C., to the concerned Police Station for investigation, Supaul Mahila P.S. Case No. 59 of 2014 was registered for the offences under Sections 323, 376, 506, 366A of IPC and Section 4 of the POCSO Act on 02.06.2014 and a formal FIR was drawn up against the appellant and his three unknown



associates. After investigation, the police chargesheeted only the appellant for the offences under Sections 366-A and 376 of IPC only. But differing with the police conclusion, cognizance of the offence under Section 4 of the POCSO Act besides other offences punishable under Sections 366-A and 376 of IPC was also taken against the appellant by the trial court.

4. The appellant stood charged for the offences under Sections 323, 366-A, 376 and 506 of IPC and Section 4 of the POCSO Act that was read over and explained to him in Hindi to which he did not plead guilty and claimed to be tried.

5. In ocular evidence the prosecution examined altogether the following eight witnesses:-

Sl. No.	Name	Relevancy
P.W.1	Hare Ram Mahto	A Witness of facts
P.W.2	'M'	Victim's father
P.W.3	Shambhu	A Witness of facts
P.W.4	Satya Narayan Mahto	A Witness of facts
P.W.5	'N'	Informant and victim
P.W.6	Prem Lata Bhupashri	Investigating Officer
P.W.7	Dr. Arun Kumar Singh	Doctor
P.W.8	Dr. Ragini Bhushan	Doctor

6. In documentary evidence following documents were proved and exhibited by the prosecution:-

Sl. No.	Relevancy
Ext.1	Endorsement on complaint petition bearing case no.
Ext.2	Medical examination report of the informant



7. After the completion of prosecution's evidence, the statement of the appellant was recorded under Section 313 of Cr.P.C. by the trial court giving him an opportunity to explain all the material incriminating circumstances appearing against him from the prosecution evidences which were denied by him and he claimed himself to be innocent, although he did not take any specific defence while recording his statement.

8. Mr. Shashi Bhushan Prasad, learned counsel appearing for the appellant and Ms. Anita Kumari Singh, learned APP for the State are present and they are heard.

**Analysis:-**

9. I have perused the judgment impugned, the evidences adduced by both the sides before the trial court and the statement of the appellant.

10. Mr. Shashi Bhushan Prasad, learned counsel appearing for the appellant has argued that an inordinate delay of 26 days in filing the complaint by the victim took place without explaining the convincing reason and the same is sufficient to cast a serious doubt in the credibility of the prosecution story narrated by the victim in her complaint.



**10.1.** In response to the said contention, learned APP for the State has submitted that the said delay was properly explained by the victim in her complaint and according to her, after the commission of the occurrence, *panchayat* meetings were held and when no fruitful result came out of the *panchayat* meetings then the victim and her father went to the police station but no action was taken.

**10.2.** In the light of the aforesaid contention, I have perused the FIR, based on the complaint of the victim as well as the evidence of the prosecution witnesses. The alleged occurrence is stated to have taken place on 03.04.2014 and the incident of missing of the victim on the alleged date of occurrence had come in the knowledge of the victim's parents on the same day and as per the evidence of the victim 'N' (P.W.5.), on the next day from her kidnapping she was rescued from the railway station and admittedly, the complaint was filed on 29.04.2014, so, the delay period between 04.04.2014 and 29.04.2014 was to be explained by the prosecution before the trial court. In this regard, the victim mainly took the plea that on account of *panchayat* meetings having held in between them and, subsequently, no action was taken by the police despite they had approached to the police, the said delay occurred. But the said explanation does not seem to be reliable as



none amongst the persons, who attended the said *panchayat* meetings, such as local sarpanch, panch and others, was produced and examined by the prosecution before the trial court to substantiate the victim's plea as to the *panchayat* meetings having held in between the family of the accused and informant's family. Moreover, there is serious contradiction in prosecution evidence in respect of conducting the said *panchayat* meetings. The victim revealed in her complaint petition that several *panchayat* meetings were held however, the accused and his family members did not become agree to the directions given in the *panchayat*. But the victim's father 'M' (P.W.2.) deposed in his examination-in-chief in paragraph No. 2 that the accused did not appear in the *panchayat* meetings while as per the victim, the accused participated in the *panchayat* meetings but did not become agree to the directions of the *panchayat*.

**10.3.** The investigating officer did not take any attempt to verify the *factum* of holding the said panchayat meetings, so, there is no convincing material to explain the long delay of 26 days having occurred on the part of the victim or her family in taking legal action in respect of the commission of the alleged occurrence. Though, a delay in lodging the FIR is generally not, by itself considered a ground to discard the prosecution's case but in



respect of the such delay, the prosecution must offer a plausible and satisfactory explanation otherwise it will raise serious doubts in prosecution's allegations. In this regard, I would like to refer to the observations which are relevant to the present matter made by the Hon'ble Apex Court in the paragraph nos. 14 and 15 of the judgment passed in the case of ***Sekaran vs. State of Tamil Nadu***, reported in ***(2024) 2 SCC 176*** and the same are being reproduced as under:-

*“ 14. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version.*

*15. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.”*



**11.** The second contention made by the appellant's counsel is that the place of recovery of the victim as shown in the complaint is highly doubtful.

**11.1.** In response to this contention, it has been submitted by learned APP that the victim as well as other prosecution witnesses (P.W.3. & P.W.4.) remained consistent to the place of recovery of the victim shown in the prosecution story.

**11.2.** As per the prosecution story narrated by the victim in her complaint, she was brought and rescued by her villagers namely Ajit Mahto, Hare Ram Mahto and Satya Narayan Mahto, etc., from Saharsa railway station but she remained silent with regard to the time of that part of the incident in her complaint before the trial court. The victim stated that her villagers reached at the railway station while searching for her in the morning and upon seeing them, she raised an alarm, then the appellant and his associates fled away. While Hare Ram Matho, P.W.1., deposed in his examination-in-chief that during the course of searching for the victim in the night they reached at Saharsa railway station at 11-11:30 p.m. and they saw the victim, who raised an alarm from a train. Satya Narayan Mahto, P.W.4, who was also among them and found the victim at Saharsa railway station, stated in his cross-



examination that after finding the victim, no information was given to Saharsa Sadar police station. The said contradiction with regard to the timing of recovery of the victim at the said railway station and no action on the part of the searching team in informing the nearby police station or taking other legal step immediately after finding the victim, creates a serious doubt in the prosecution story.

**12.** The third contention raised by the appellant's counsel is that the investigation made by the investigating officer in connection with the offences alleged by the victim is completely defective and there are serious lapses in the investigation with regard to the second part of the alleged occurrence resulting to the sexual assault and the same has also weakened the prosecution's case.

**12.1.** I find substance in the said contention. The prosecution story as narrated by the victim in her complaint consisting of two parts, first part relates to kidnapping made by the appellant and his associates, second relates to her confinement in the house of the appellant's maternal sister where the appellant confined and raped the victim. In respect of the second part of the prosecution story, the investigation officer did not make any investigation and even did not take any pain to inspect or find out



the place of occurrence relating to second part of the occurrence concerning to the offence of sexual assault. The investigating officer, examined as P.W.6 accepted in the cross-examination that she did not verify the places of occurrences except one place that relates to the occurrence of kidnapping. She further stated in the cross-examination that she could not state the dates upon which the statements of the witnesses were recorded as all the witnesses were examined on the same date. This statement shows that the investigating officer was not serious in conducting the investigation to verify the accusations levelled by the victim particularly with regard to the main and second part of the occurrence rather she stated that during investigation, some witnesses revealed before her that the alleged incident was the result of a love affair. The investigating officer did not take attempt to seize the tempo which was used by the accused in taking the victim to the alleged places and no investigating was made to ascertain the identities of the appellant's associates who were three in numbers and actively helped the appellant in kidnapping the victim and confining her in the house of appellant's maternal sister. These lapses on the part of the investigating officer cannot be ignored as the same are very serious in nature and go to the root of the matter. In this regard, I would like to refer to the



observation made by the Hon'ble Apex Court in the case of **Sunil Kundu and Another vs. State of Jharkhand** and other analogous cases, reported in (2013) 4 SCC 422, of which paragraph no. 29 is relevant and the same is reproduced as under:-

*“29. We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious. PW 5 Jaldhari Yadav is a pancha to the seizure panchnama under which weapons and other articles were seized from the scene of offence and also to the inquest panchnama. Independent panchas have not been examined. The investigating officer has stated in his evidence that the seized articles were not sent to the court along with the charge-sheet. They were kept in the malkhana of the police station. He has admitted that the seized articles were not sent to the forensic science laboratory. No explanation is offered by him about the missing sanha entries. His evidence on that aspect is evasive. Clothes of the deceased were not sent to the forensic science laboratory. The investigating officer*



*admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides, the evidence of eyewitnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder. It is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. In the circumstances, we quash and set aside the impugned judgment and order . The appellant-accused are in jail. We direct that the appellants A-1 Sunil Kundu, A-2 Bablu Kundu, A-3 Nageshwar Prasad Sah and A-4 Hira Lal Yadav be released forthwith unless otherwise required in any other case.”*

**Conclusion:-**

**13.** For the reasons stated above I find substance in the appellant’s contentions discussed above and the same are sufficient to cast a serious doubt in the prosecution’s allegations levelled against the appellant by the victim and the trial court’s approach in convicting the appellant for the charged offences does not inspire confidence of this Court and there are sufficient circumstances discussed above making the prosecution’s allegations to be highly suspicious and the trial court failed to appreciate the prosecution evidences in right perspective. The appellant is entitled to get the benefit of doubt.



**14.** In the result, the impugned judgment dated 04.11.2015, whereby the appellant was convicted for the charged offences, and the impugned order dated 09.11.2015, whereby the appellant was sentenced for the said offences, passed in POCSO Trial No. 17 of 2014 arising out of Supaul Mahila P.S. Case No. 59 of 2014, are hereby set aside.

**15.** The appeal is allowed.

**16.** The appellant is presently on bail in this matter, accordingly, his bail bonds shall stand cancelled forthwith, and he as well as his sureties are hereby discharged from their respective liabilities.

**17.** Let the records of the trial court along with the copy of this judgment be sent forthwith to the court concerned for compliance and doing the needful.

**(Shailendra Singh, J)**

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AFR/NAFR	AFR
CAV DATE	NA
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