

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3490 of 2025**

Arising Out of PS. Case No.-63 Year-2021 Thana- CHAORI District- Bhojpur

Vishal Kumar @ Raja S/O Satyendra Rai @ Satyendra Kumar Rai R/O
Village- Purhara, P.S.- Chouri, District- Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar, Patna
2. MS. X D/O Y R/O Vill.- Purhara, P.S.- Chouri, Dist.- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashutosh Kumar, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT**

Date : 20 -01.2026

The present appeal has been directed against the judgment of conviction and order of sentence dated 21.07.2025 passed by learned Special Judge, Exclusive POCSO Court-cum-ADJ-VI, Bhojpur at Ara in POCSO Case No. 50 of 2021, arising out of Chouri P.S. Case No. Case No. 63 of 2023, whereby the appellant has been convicted for the offence punishable under Sections- 354-A and 341 of I.P.C. and sentenced to undergo R.I. for one year and fine of Rs. 5,000/- for the offence punishable under Section-354-A of I.P.C. and, in default of payment of fine, to undergo R.I. for further one month and fine of Rs. 500/- for the offence punishable under Section-341 of I.P.C. and, in default of payment of fine, to undergo S.I. for further fifteen



days. However, the appellant has been acquitted of the charges under Sections- 354-B and 504 of I.P.C. and 08 and 12 of POCSO Act.

2. The name of victim has not been disclosed in the present judgment to protect her prestige and dignity.

3. As per the prosecution case, informant victim, narrated the story of prosecution that on 08.06.2021, at about 11:30 p.m., the victim informant, aged about 15 years proceeded to watch the dance programme at the house of villager Udhi Rai. On the way, near the house of Sanjay Master, appellant caught hold of the informant/victim at the time of loneliness prevailing at said place and started talking in indecent manner and informant/victim has stated that at the same time and place she released her hand and started making hue and cry. Lastly, she was left and she began to abuse in rage and victim has stated that she told the appellant that she would inform the guardian and the villagers regarding the said occurrence, then the appellant slapped her and she has told all the occurrence to her parents so that legal proceeding will take its own course against appellant.

4. On the basis of aforesaid written application of informant/victim, Chouri P.S. Case No. 63 of 2021 was



registered for the offences punishable under Sections- 341, 323, 354-B, 504 of I.P.C. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet was submitted against the appellant under the aforesaid Sections and cognizance was taken under Sections- 323, 341, 354-A, 354-B, 504 of I.P.C. and Sections- 08 and 12 of POCSO Act. Thereafter, the case was committed to the Court of Sessions after following due procedure. The learned trial court framed charges against the appellant under Sections- 354-A, 354-B, 341, 504 of I.P.C. and Sections- 08 and 12 of POCSO Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of the accused person, prosecution has examined all together five witnesses. P.W. 1/Father of victim, P.W.2/The victim, P.W. 3/Brother of victim, P.W. 4/Uncle of victim and P.W. 5/Pradip Kumar Pandey (Investigating Officer).

6. Prosecution has relied upon following documentary evidence on record:-

Ext-P-1/PW 2, Written report by victim-cum-informant, for identification- Admit Card of victim (xerox);

Ext-P-2/PW 5, Endorsement and signature on written application;

Ext-P-3/W 5, Writing and



signature of SHO on charge-sheet;

7. Defence has not produced any oral or documentary evidence. However, defence of appellant as gathered from the line of cross-examination of prosecution witnesses as well as from the statement under Section-313 Cr.P.C. is that of total denial of the charges.

8. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of the judgment.

9. Heard learned counsel appearing for the appellant at sufficient length of time. Following submissions have been made on behalf of learned counsel for the appellant:-

10. Learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence is fit to be set aside on the ground that the concerned Court has not appreciated and evaluated the material available on record and reached to the wrong conclusion. On the same set of facts, the concerned Court has given the finding that the prosecution has failed to prove the charges under Sections- 354B and 504 of I.P.C. and Sections-8 and 12 of POCSO Act against the appellant and the appellant stands acquitted from the charges under Sections-354B and 504 of I.P.C. and Sections-8 and 12 of



POCSO Act and while acquitting the appellant under the aforesaid Sections, the trial court has recorded that allegation under Section-354B of I.P.C. is not supported by any cogent evidence and, hence, the appellant stands acquitted under said Section and while acquitting the appellant from the charge under Section- 504 of I.P.C., the concerned Court has recorded the reasoning that there is no whisper in the evidence of victim about the appellant using abusive language. So, he stands acquitted under Section- 504 of I.P.C. Similarly, accused also stands acquitted under Sections- 8 and 12 of POCSO Act. The question arises then how the appellant will be held guilty under Sections- 354A and 341 of I.P.C. and there is no specific allegation against appellant of restraining the victim to proceed rather allegation was that he caught hold and started making indecent behaviour. Even the statement of victim suffers from infirmities. There is no description of tearing of clothe, thrashing on the ground and availability of torch in the initial version of prosecution-story, but at the time of adducing evidence before Court, P.W. 2/informant, who sets the prosecution story into motion, has improved her statement and stated regarding tearing of clothe, thrashing on the ground and availability of torch. When it is compared to initial version of



prosecution-story, it can easily be asserted that certain statements were first time adduced while adducing evidence before Court and P.W. 2, who is the victim-cum-informant and sole eye-witness of the occurrence improved the earlier statement as stated in initial version of prosecution-story, which completely reflects that how informant/victim has twisted the story of prosecution to make the offence graver. In para-8, she has stated that she proceeded to see the venue of dance after getting permission from her mother, but at the same time, she stated that no permission was given by her mother and she went away silently. In the same way, she has stated that she went to the venue of dance after refusal of permission by her mother. In this way, her statement is quite contradictory. Her two versions for proceeding towards the venue of dance is quite contradictory. At one occasion, she seeks permission and she proceeds with the permission of her mother and at other time she stated that she proceeded without taking permission. The very act of rushing towards the venue of dance is questionable. In a village, there is hardly any probability of a minor girl leaving the house alone in night, in normal course, without urgency. Normally, people go to watch dance programme in groups. As such, it is beyond imagination that a minor girl is



allowed to go to watch a dance programme alone and in the present case grant of permission is also in question. Her statement regarding grant of permission from her mother is far from truthfulness. Likewise, on the point of showing torch to the police, sometimes she has stated that she showed the torch to the police and another time she has stated in same para-13 that she did not show the torch to the police. On the said point of showing the torch to police, her statement is totally contradictory and in para-21, though the suggestion that no such incident, as stated by her, had taken place was denied by the victim, but it denotes that the cow, buffalo of informant side proceeded to the land of appellant for grazing and on the said reason dispute arose and the present case has been falsely filed against the appellant. Learned counsel for the appellant has submitted that the reason behind false implication of appellant has already been suggested, though suggestion has been denied and statement of P.W. 2 is full of contradictions, infirmities and no reliance can be placed in light of evaluation of the contradictory statements given by informant/victim.

11. Learned counsel for the State has submitted that victim is the eye-witness of the occurrence and she has supported and corroborated the allegation made in the F.I.R. and



other witnesses have also supported and corroborated the story of prosecution and there is no reason to differ with the finding of the concerned Court and the judgment of conviction and order of sentence passed by the concerned Court is justified and legal and no interference is needed.

12. The question which arises for consideration is:

“Whether offence under Sections-354-A and 341 of I.P.C. is made out in the light of given facts and circumstances of the case or not?”

13. I have perused the impugned judgment and order of the trial Court and the trial court record and I have given my thoughtful consideration to the submissions advanced on behalf of the parties as noted above.

14. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

15. P.W. 1 is the father of victim. He was not present at the place of occurrence. When P.W. 1 came to house, the occurrence was narrated by the victim to him and he has also improved his statement which has not mentioned in the F.I.R. that appellant's father came and he also abused and in para-22 he says that he knew regarding the occurrence from Nand Kumar Singh. In this way, the statement of P.W. 1 is also contradictory on the point that at one point of time he stated that



the knowledge regarding occurrence was given by his daughter, P.W. 2, and in para-22 he has stated that he got the knowledge about the said occurrence from his wife. He has stated that when he came to know about the occurrence, Kundan Kumar, Nand Kumar Singh and his wife were all at the same place at the same time. The suggestion was also given to P.W. 1 that his buffalo went to graze the field of appellant, as a result of which the land was grazed. The said suggestion was denied. In this way, his statement is also full of infirmities and discrepancies.

16. P.W. 2 is the victim herself. She has stated in her examination-in-chief that the incident took place on 18.06.2021 at about 11:30 p.m. She was going to watch the dance programme at the house of Uddhav Rai. She was having a torch in her hand. In the meantime, Vishal Kumar @ Raja came from behind and tied her mouth. She identified the accused in the light of the torch. Vishal Kumar thrashed her on the ground, tore her clothe and also assaulted her. The place of occurrence was a lonely place. Though she was crying, but no one came to her rescue. Somehow, she managed to flee away and when she reached her home, she narrated the incident to her parents. Thereafter, she went to the police station with her parents and submitted an application in her pen and signature. She has



identified the application which was marked as Ext.-P/1. In her cross-examination, at para-8, she has stated that she had gone to watch the dance programme after intimating her mother. She further states that though her mother had denied to grant permission, but she proceeded stealthily. She has further stated that it was dark at the place of occurrence and she had not showed to the police. She further states that the torch had got broken and she had not showed even the broken torch to the police. In para-15 she has stated that the accused had kept her mouth closed for two minutes and when she was thrashed on the ground, her mouth got opened. She had received injury only in her right leg and she had not received injury on any other part of her body. She further states that she had not showed her injury to the police. In para-16 she has stated that on her raising alarm, no one had come to the place of occurrence and she had first of all, informed her mother about the incident as her father was not present in the house and had gone to see the marriage ceremony. Her father came after half an hour after getting the information regarding the occurrence. In para-18 she has stated that she, her father, her father's elder brother and her younger brother had gone to the police station. She has also stated that on account of her falling, the torch had broken, and it slipped from her hand



and she left it at the place of occurrence and fled away from the place of occurrence. In para-19 she has stated that she had showed the place of occurrence to the police, but torch or glass was not there nor she had told the police about the torch. She has stated that she had written the application which was given to the police. In the said application she had not written about the torch. She had not even written that she identified Vishal Kumar in the light of the torch. She had written in the application that Vishal Kumar thrashed her and tore her clothe. She has also written in the application that it was a lonely place and on her raising alarm no one came. She has further stated that after submitting the application, police had not made any query from her nor the police had recorded her statement. She has denied the suggestion that no such incident, as stated by her, had taken place. She further denied that grazing of field of the accused by the cow and buffalo of the prosecution side is the bone of contention due to which she has lodged this false case.

17. P.W. 3, who is the brother of victim, has stated that his sister was returning from the venue of dance then appellant began to make indecent behaviour which finds no place in the F.I.R. As per the very initial version of prosecution-story, she proceeded towards the venue of dance and in the way



she was caught and she suffered indecent behaviour. In this way, he has stated that the story of prosecution in his own way and he has stated in para-19 that he has three buffaloes and he was not present at the place of occurrence. He has stated that occurrence was **not** informed to Mukhiya, Sarpanch.

18. P.W. 4 has stated that he is the uncle of victim and he has stated in para-9 that his niece (victim) went to see the venue of dance alone and she reached to the venue after getting permission from the guardian and in para-18 he has stated that he gave statement before police that when she was returning after watching the dance, appellant made scuffle and she began to cry. His statement is also inconsistent with the initial version of prosecution.

19. P.W. 5 is the I.O. He has stated that on 18.06.2021, he was posted as Assistant Sub-Inspector at Chauri Police Station and he was entrusted with the investigation of the present case. In his cross-examination at para-13 he has stated that he had not recorded the statement of the witnesses of boundary and in para-14 he has stated that he had also not recorded the statement of Sanjay Master or any of his family members. In para-15 he has stated that he had recorded the statement of Bhagwan and Bhikhari Singh and they had stated



that the mental condition of appellant was not good and his treatment was going on in Piro. In para-16 he has stated that he had not got the victim medically examined. In para-17 he has stated that though he had conducted investigation regarding the age of the victim, but it is not mentioned in the case diary. In para-18 he has further stated that he had also not got Vishal Kumar medically examined. From the perusal of evidence of I.O., it is evident that the investigation is full of infirmities as the Investigating Officer has not recorded the statement of the witnesses of boundary of P.O. and despite the fact that the appellant was not found medically fit, no medical examination was conducted by the I.O. regarding the health of appellant and he has also admitted that no torn clothe was given to him. Thus, his statements are full of infirmities, discrepancies.

20. From the perusal of evidence adduced on behalf of prosecution, it is crystal clear that the evidence of all the prosecution-witnesses suffers from infirmities, discrepancies and inconsistencies and the very conduct of I.O. is not fair as despite the fact that appellant's condition was not medically fit, no medical examination of the appellant was conducted and the truth of the case is not revealed and the very purpose of investigation is to know the truth of the act regarding the case.



The statement of victim is very contradictory regarding the permission of her mother before act of rushing to see the dance and the spot on which occurrence had taken place was alleged to be shown as a lonely place and the owner of the house situated near the place where occurrence took place, was not examined. I.O. has not given any reason as to why the said person has not been examined and the very version of victim is that at the time when she was caught hold, she was being abused and harassed and despite raising alarm, no one reached there. The manner in which the occurrence has taken place, it is shown that no one is eye-witness of occurrence, but victim herself is the eye-witness, but her statement on the point of going out of the house is contradictory and her statement is questionable. At one place she has stated that she proceeded after getting permission from her mother, but again she said that though permission was not given, but she proceeded. Likewise, there is no description of tearing of clothe, thrashing on the ground and availability of torch in the initial version of prosecution-story, but at the time of adducing evidence before Court, P.W. 2/informant, who sets the prosecution story into motion, has improved her statement and stated regarding tearing of clothe, thrashing on the ground and availability of torch. When it is compared to initial version



of prosecution-story, it can easily be asserted that certain statements were first time adduced while adducing evidence before Court and P.W. 2, who is the victim-cum-informant and sole eye-witness of the occurrence, improved her version at the time of adducing evidence which finds no place in the earlier version of prosecution-story, which completely reflects that how informant/victim has twisted the story of prosecution to make the offence graver. In this way, her statement does not inspire confidence.

21. Hence, the contention of learned counsel for the appellant is quite convincing, tenable and sustainable that when, on the same set of facts, the appellant stands acquitted under Sections- 354-B and 504 of I.P.C. and 08 and 12 of POCSO Act, there is no reason to convict the appellant under Sections- 354-A and 341 of I.P.C. where the credibility of victim is questionable and does not carry authenticity.

22. In the result, in my view, prosecution-case suffers from several infirmities, as noted above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of the settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence is



hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of his bail-bonds.

23. Pending Interlocutory Application(s), if any, shall also stand disposed of.

24. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

25. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	11.12.2025
Uploading Date	20.01.2026
Transmission Date	20.01.2026

